EMERGING ISSUES IN GARNISHEE PROCEEDINGS IN NIGERIA[[1]](#footnote-1)

**Introduction**

The institution and prosecution of cases in Nigeria till judgment is obtained is a herculean task. This is so because a successful litigant in a civil matter is likely to spend not less than 15 years in the prosecution of his case from the High Court, through the Court of Appeal to the Supreme Court. Even where a litigant is successful at the end of the day, enforcement of the judgment, though not as difficult as the prosecution of cases, is another task on its own because the judgment debtor is more likely to take steps towards frustrating the successful litigant from realising the fruit of the judgment.

According to Afe Babalola[[2]](#footnote-2)

“A judgment may require payment by one person to another or into court of a sum of money or it may require a person to do or to abstain from doing a particular act or acts. In either case, a court will not normally take, in ordinary civil matters, any initiative in the enforcement of its judgments. It, therefore, behoves the successful party after taking certain preliminary steps to invoke the machinery of the court in various ways to enforce the judgment or order and so secure the benefit of his success in the litigation.”

One of the methods by which judgments could be enforced, precisely money judgments, is by way of garnishee proceedings. In garnishee proceedings, a judgment creditor may attach or garnishee debts which another person owes the judgment debtor in satisfaction of the judgment debt. The debt owed by the other person to the judgment debtor, on being attached, is ultimately paid by that person to the judgment creditor. Fidelis Nwadialo[[3]](#footnote-3) describes Garnishee proceedings thus:

“Garnishee proceedings involve the attachment of debt due from a third party to the judgment debtor and the use of the amount of that debt in liquidating the judgment debt.”

Similarly, Halsbury’s Laws of England[[4]](#footnote-4) describes garnishee in terms of orders thus:

“Third party debt orders, formerly known as ‘garnishee orders’, are one of the methods of enforcing a money judgment. Upon the application of the judgment creditor, the court may make an order (a ‘final third party debt order’) requiring a third party to pay to the judgment creditor (1) the amount of any debt due or accruing due to the judgment debtor from the third party; or (2) as much of it as may be sufficient to satisfy the judgment debt and the judgment creditor’s costs of the application.

The court will not make a final third party debt order without first making an interim third party debt order.”

Further, Black’s Law Dictionary[[5]](#footnote-5) in describing Garnishee proceedings otherwise known as garnishment states thus:

“A judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor’s property (such as wages or bank accounts) held by that third party.”

In brief, therefore, it is clear that the essence of garnishee proceedings is enforcement of money judgment which money is in the hands of a third party but held in favour of the judgment debtor.

**Conceptual Clarification**

For a proper appreciation of garnishee proceedings, it is apt to clarify some of the terms that are often associated with it. It is in this context that we intend to briefly expound on terms or concepts such as judgment creditor, judgment debtor and garnishee.

***Who is a Judgment Creditor?***

Under the Sheriffs and Civil Process Act,[[6]](#footnote-6) a judgment creditor was defined as “any person for the time being entitled to enforce a judgment”.[[7]](#footnote-7) In the same vein, Halsbury’s Laws of England[[8]](#footnote-8) defines a Judgment creditor thus:

“a person who has obtained or is entitled to enforce a judgment or order”

This probably informs the position of Nwadialo[[9]](#footnote-9) when he posits that the terms “judgment creditor” and “judgment debtor” are used for every type of judgment or order.

Black’s Law Dictionary,[[10]](#footnote-10) however, gives a restrictive definition to the meaning of judgment creditor by defining same as “A person having a legal right to enforce execution of a judgment for a specific sum of money.” The same restrictive definition was given to the meaning of judgment debtor.[[11]](#footnote-11) It is believed that this restriction of the meaning of judgment creditor to payment of a sum of money would appear to be technically correct as credit presupposes the existence of a sum and vice versa as regards debt. To one’s mind, the implication of this is that the continuous application of the term ‘judgement debt’ or ‘judgment credit’ is a misnomer as the use of the words “creditor” and “debtor” necessarily implies transaction to do with sum owed.

It is also pertinent to state that in garnishee proceedings, a judgment creditor is also known as a “garnishor”[[12]](#footnote-12) or a “garnisher”.[[13]](#footnote-13)

***Who is a Judgment Debtor?***

Under the Sheriffs and Civil Process Act,[[14]](#footnote-14) a judgment debtor was defined as “a person liable under a judgment.”[[15]](#footnote-15) In the same vein, Halsbury’s Laws of England[[16]](#footnote-16) defined a judgment debtor as “a person against whom a judgment or order was given or made”. So for the purpose of our analysis, a judgement debtor is that person under the burden of a judgement to discharge an obligation.

***Who is a Garnishee?***

Black’s Law Dictionary[[17]](#footnote-17) defines garnishee as “A person or institution (such as a bank) that is indebted to or is a bailee for another whose property has been subjected to garnishment.” Garnishment, in this instance, is referring to attachment. In ***STB Ltd. v. Contract Resources (Nig.) Ltd.,*** [[18]](#footnote-18) **Olagunju, J.C.A.** defined a garnishee thus:

“…‘a garnishee’ is a third party who is indebted to the judgment debtor or having custody of his money and who at the instance of the judgment creditor is being called upon to pay the judgment debt from his indebtedness to the judgment debtor or from the credit of the judgment debtor in his account with the third party.”

Succinctly, a garnishee is a third party indebted to the judgment debtor.

In all, the terms “judgment creditor”, “judgment debtor” and “garnishee” were described in the case of ***U. B. A. v. S. G. B. Ltd.*** [[19]](#footnote-19) as thus:

“The law is that where a person, known as a judgment creditor, has obtained judgment or order for the payment by some other person, known as a judgment debtor, of a sum of money and any other person within the jurisdiction, known as the garnishee, is indebted to judgment debtor, the Court may order the garnishee to pay the judgment creditor the amount of any debt due or accruing due to the judgment debtor from the garnishee."

It is important to note, however, that the terms ‘judgment creditor’ and ‘judgment debtor’ in the above case are limited to payment of sum of money because it restricts the definition of the terms to the sense of garnishee proceedings.

**Nature of Garnishee proceedings**

Salami J.C.A. (as he then was), in the case of **P. P. M. C. Ltd v. Delphi Pet. Inc.** [[20]](#footnote-20) describes garnishee proceedings thus:

“A garnishee proceedings although incidental to the judgment pronouncing the debt owing, the appellants being judgment debtor are not necessary party to the said proceedings. The procedure whereby the judgment creditor obtains the order of the court to attach from any person within the jurisdiction of the court assets of judgment debtor to satisfy the judgment debt is described as *attachment of debt* and is one of several methods of executing judgment. The proceedings for this separate and distinct action is between the respondent, herein the Guaranty Trust Bank plc., the garnishee which has not appealed the said decision.”

Beyond the definition of garnishee proceedings in the above description, inferable also is the fact that garnishee proceedings are distinct proceedings from the original action, the import of which is that it is only incidental to the action which produced the judgment. This much was held by His Lordship, **Kekere-Ekun J.C.A. (as he then was),** in **Denton-West v. Muom**a[[21]](#footnote-21) when His Lordship stated thus:

“There is no doubt that garnishee proceedings are separate proceedings between the judgment creditor and the person or body who has custody of the assets of the judgment debtor, even though it flows from the judgment that pronounced the debt owing.”

As we shall later demonstrate, this distinction possibly accounts for the position taken by our courts on the issues of parties to the proceedings or on the issues we shall be discussing in this paper such as parties to the proceedings, right of appeal, question of stay etc. Suffice, however, to note that at the initial stage of garnishee proceedings, only the judgment creditor and the garnishee are usually involved thereby excluding the judgment debtor.

Again, garnishee proceedings, to such an extent, would appear to differ from execution. According to **Galadima, J.C.A.** (as he then was) in the case of ***Purification Tech. (Nig.) Ltd. v. Attorney General of Lagos State,[[22]](#footnote-22)*** garnishee proceedings were described thus:

“Again, given the distinction that exists between execution and garnishee proceedings for the enforcement of a judgment, I do not think the existence of an application seeking for an order staying execution of a judgment does preclude a judgment creditor from seeking to use some other legal method to enforce judgment.

There is clear distinction between execution of judgments and other methods of enforcing judgments, such as garnishee proceedings. The distinction is brought out by the definition of “writ of execution” in section 19 of the Sheriffs and Civil Process Act, Cap. 407, Laws of the Federation, 1990. Writ of execution includes writ of attachment and sale, writ of delivery, writ of possession and writ of sequestration. It excludes a garnishee proceedings”.

While we shall later on comment on the appropriateness of the statutory reference contained in His Lordship’s dictum, the implication of the above position of His Lordship is that failure of garnishee proceedings in whatever form will still ultimately require execution. No wonder, therefore, that some of Their Lordships have deemed it fit in some cases to describe the garnishee process as auxiliary or ancillary mode of enforcement of judgment. For instance in the case of **Nitel Plc. v. I. C. I. C. (Directory Publishers) Ltd.,**[[23]](#footnote-23)Omoleye, J.C.A. had this to say on garnishee proceedings:

“A garnishee proceeding or attachment of debts is a method auxiliary to that of execution for the enforcement of a judgment or order for the payment of money into court enabling the judgment creditor to attach money due to the judgment debtor from a third person called the garnishee, who must be within the jurisdiction of court.”

See also the cases of ***Denton-West v. Muoma***,**[[24]](#footnote-24)** and ***U. B. A. v. Ekanem.***[[25]](#footnote-25)

Therefore, whilst garnishee proceedings strictly relate to money judgment, same cannot be said of writ of execution. Secondly, ultimate execution under garnishee proceedings is usually on the garnishee’s assets unlike under writ of execution which is usually directed against the judgment debtor’s assets. Last but not the least, garnishee proceedings are usually a faster mode of enforcement when compared with writ of execution.

Another feature of garnishee proceedings as opposed to other method of enforcement of judgment is that it is like an equitable charge on the assets of the judgment debtor in the hand of a third party. **Saulawa J.C.A.**, in the case of ***C.B.N. v. Auto Import Export*[[26]](#footnote-26)**aptly captures it in the following words:

“However, it must be emphatically made clear, that the mere service of the garnishee order nisi on the garnishee does not necessarily operate as a transfer of the ownership of the debt to the judgment creditor. Conversely, it merely creates an equitable charge on the debt in his favour and the garnishee cannot pay the debt to anyone but the judgment creditor without the risk of having to pay it over again.”

Another peculiarity of garnishee proceeding lies in the fact that it is not every debt that is attachable under it. For a debt to be attachable under garnishee proceedings, such debt must be either due or accruing to the judgment debtor.[[27]](#footnote-27) The debt must be a present and existing one owed to the judgment debtor or there must be a right to receive the debt by the judgment debtor. This point was reinforced by Hallett, J in the case of ***Seabrook Estate Co., Ltd v. Ford,***[[28]](#footnote-28) when His Lordship held as follows:

“In order that a sum can be attached there must be an actual debt existing at the time the order is sought, though the debt need not be then payable. There has been a good deal of discussion and authority about the words “debts owing or accruing” [in R.S.C., Ord. 45, r. 1], but I think that the position is reasonably clear having regard to the judgment of the Court of Appeal in Webb v. Stenton (1). It is now well settled that a sum of money may properly be the subject of a garnishee order although the time for payment of it is in the future- solvendum in future- provided that it constitutes debitum in praesenti, viz., a sum of money the obligation to pay which is in existence at the date when the garnishee order is sought.”

Thus, it can safely be said that garnishee proceedings cannot be commenced by a judgment creditor if the debt sought to be attached has not become due to the judgment debtor.[[29]](#footnote-29)

From the above, the following are obvious on the nature of garnishee proceedings:

1. Garnishee proceedings are one of the several methods of enforcing judgments.
2. Garnishee proceedings are ordinarily a separate and distinct action between the judgment creditor and the garnishee who is in possession of the monetary assets of the judgment debtor.
3. The judgment debtor is not a necessary party to the initial application (ex parte) leading to the garnishee order nisi.

**Procedure in Garnishee Proceedings**

In Nigeria, the procedure for garnishee proceedings is regulated by the Sheriffs and Civil Process Act, 1945 LFN, Cap S6, 2011 and the Judgments (Enforcement) Rules made pursuant to section 94 of the Sheriff and Civil Process Act. Virtually, all the States, if not all, have adopted the Sheriffs and Civil Process Act[[30]](#footnote-30) and the Judgments (Enforcement) Rules. Consequently, the Sheriffs and Civil Process Act and Judgments (Enforcement) Rules are contained in Laws of the different States of the Federation.

While Part V of the Sheriffs and Civil Process Act and Order VIII of the Judgments (Enforcement) Rules both regulate the procedure and proceedings for attachment of debt by garnishee order, Section 83[[31]](#footnote-31) is the main provision on method of commencement of garnishee proceedings. Section 83(1) and (2) state as follows:

“(1) The court may, upon the ex parte application of any person who is entitled to the benefit of a judgment for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment and upon affidavit by the applicant or his legal practitioner that judgment has been recovered and that it is still unsatisfied and to what amount, and that any other person is indebted to such debtor and is within the State, order that debts owing from such third person, hereinafter called the garnishee, to such debtor shall be attached to satisfy the judgment or order, together with the costs of the garnishee proceedings and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid.”

“(2) At least fourteen days before the day of hearing, a copy of the order nisi shall be served upon the garnishee and on the judgment debtor.”

The first stage involves the judgment creditor commencing the proceedings by way of an *ex parte* application which shall be supported by an affidavit deposed to either by the judgment creditor or his legal practitioner stating that judgment has been obtained and that judgment is still unsatisfied. The affidavit is also expected to state the extent of the amount so unsatisfied and that a third party who is within the State (jurisdiction) is indebted to the judgment debtor. Where the garnishee proceedings are before a court other than the court that gave the judgment, a certified true copy of the judgment shall be attached to the affidavit in support of the ex parte application.[[32]](#footnote-32)

Where the court is satisfied that the judgment creditor is entitled to attach the debt, the court makes a garnishee order nisi. The garnishee order nisi is issued in accordance with Form 26[[33]](#footnote-33) and it directs the garnishee to appear in court on a specified date to show cause why an order should not be made against him for payment to the judgment creditor the amount of the debt owed to the judgment debtor.[[34]](#footnote-34) At least, 14 days before the date of hearing wherein the garnishee is expected to appear and show cause, a copy of the order nisi shall be served upon the garnishee and on the judgment debtor.[[35]](#footnote-35)

It is noteworthy that before or after the rendering of the order nisi, oral examination of the judgment debtor is supposed to take place. However, in practice, this is usually erroneously dispensed with.

The service of the order nisi on the garnishee binds the debt in the hands of the garnishee[[36]](#footnote-36) such that any payment of the debt to the judgment debtor or its alienation, without leave of court, shall be null and void.[[37]](#footnote-37) The garnishee may, within 8 days of the service of the order nisi on him, pay into court the amount alleged to be due from him to the judgment debtor or if that amount is more than sufficient to satisfy the judgment debt and the costs, a sum to satisfy that debt and costs.[[38]](#footnote-38) Upon payment of the said amount into court, the proceedings against the garnishee shall be stayed.[[39]](#footnote-39)

Where a garnishee disputes his liability to pay the debt, he does not have to make any payment into court, but to appear in court on the return date and dispute his liability and the court may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in any proceedings may be tried or determined or may refer the matter to a referee.[[40]](#footnote-40) Also, a garnishee may contend that the debt sought to be attached belongs to some third person or that a third person has a lien or charge on it. In this case, the court may order such third person to appear and state the nature and particulars of his claim upon such debt [[41]](#footnote-41) but if the third person does not appear, the court on proof of service of the order nisi may proceed to make an order as if such third person has appeared. Where the third person appears and after hearing his allegation and those of any other person who the court may order to appear, the court may order execution to issue to levy the amount due from the garnishee, or any issue or question to be tried and determined, and may bar the claim of such third person or may make such other order, upon such terms with respect to any lien or charge or otherwise as the court shall think just.

Where the garnishee, does not, within the time prescribed, pay into court the amount due from him and does not dispute the debt or where he does not appear as ordered, the court, on proof of service, may make the garnishee order nisi absolute.[[42]](#footnote-42)

It is important to state that garnishee proceedings may be commenced either at the High Court or Magistrate Court[[43]](#footnote-43) notwithstanding that the debt owing or accruing from the judgment debtor is for an amount exceeding the jurisdiction of that court.[[44]](#footnote-44) However, the best exposition of the stages involved in garnishee proceedings was demonstrated by **Ogunwumiju J.C.A**. in the case of **Fidelity Bank Plc. v. Okwuowulu**[[45]](#footnote-45) which shall be stated anon.

**Emerging issues in Garnishee Proceedings**

In Nigeria, garnishee proceedings as a means of enforcement of judgment is one that is encumbered by germane issues in which judicial authorities, as it is today, on the said issues cannot survive critical scrutiny. In fact, Afe Babalola[[46]](#footnote-46) agrees with this position when he stated that:

“In recent times however, the attempt to enforce judgments through garnishee proceedings have led to a number of decisions by the court in Nigeria on this process. However, some of these attempts have not been successful due to lack of appreciation of issues involved in this process.”

It is on this ground that this paper aims at examining the basic issues in garnishee proceedings with a view to appropriately putting forward what the decisions of the Court on these issues ought to be when scrutinised vis-à-vis the provisions of the law regulating garnishee proceedings in Nigeria and/or the necessity for immediate legislative intervention.

In this regard, the basic issues in garnishee proceedings which we intend to thoroughly analyse, shall, for the purpose of comprehension, be divided into two broad heads:

1. Parties to garnishee proceedings; and
2. Garnishee Proceedings and Stay of Execution (Six or half-a-dozen).

**Who are parties to garnishee proceedings?**

Majority of the Court of Appeal decisions has consistently held that although garnishee proceedings are incidental to the judgment pronouncing the debt owed, judgment debtors are not necessary party to the said proceedings. This is on the ground that garnishee proceedings are separate and distinct actions between the judgment creditor and the garnishee. In the case of ***Denton-West v. Muoma***,**[[47]](#footnote-47)** the Court of Appeal, per Kekere-Ekun, J.C.A. (as he then was), held thus:

“There is no doubt that garnishee proceedings are separate proceedings between the judgment creditor and the person or body who has custody of the assets of the judgment debtor, even though it flows from the judgment that pronounced the debt owing. See: In *Re Diamond (supra) at 133 D-E; Purification Techniques (Nig.) Ltd v. A.-G., Lagos State (supra)*.”

In the same vein, the Court of Appeal in ***P.P.M.C. Ltd. v. Delphi Pet. Inc.***,**[[48]](#footnote-48) per Salami, J.C.A**., held as follows:

“The reason for inability of the appellants to appeal against a garnishee order is for the simple fact that it is a product of proceedings between the judgment creditor and the person in possession of the assets of the judgment debtor. In the instant case, Guaranty Trust Bank is the garnishee or a person holding the assets of the judgment debtor, the appellants herein, while the respondent is the judgment creditor. A garnishee proceedings although incidental to the judgment pronouncing the debt owing, the appellants being judgment debtor are not necessary party to the said proceedings. The procedure whereby the judgment creditor obtains the order of the court to attach from any person within the jurisdiction of the court assets of judgment debtor to satisfy the judgment debt is described as attachment of debt and is one of the several methods of executing judgment. The proceedings for this separate and distinct action is between the respondent, herein and the Guaranty Trust Bank Plc., the garnishee which has not appealed the said decision. There is no substance respectfully in the submission of the learned counsel for appellants that the decision of Aderemi, J.C.A in In Re Diamond Bank Limited (2002) 17 NWLR (Pt. 795) 120 is obiter dictum. The issue in that decision was an existence or otherwise of an appeal and, the person competent to bring an appeal in a garnishee proceedings.”

Further, the case of ***U. B. A. v. Ekanem***[[49]](#footnote-49) is no exception from the earlier cases cited. Orji-Abadua J.C.A. held thus:

“A close scrutiny of the aforestated provisions reveals that a judgment debtor is merely a nominal party whose money in the custody of the garnishee is being recovered by the judgment creditor. He is not the one requested to appear before the court to show cause why the order nisi should not be made absolute. It is only the garnishee, and, only the garnishee is expected to inform the court if there is third party’s interest in the said judgment debtor’s money in its custody. So, in all ramifications, it is only the garnishee that is expected to react if the law was not properly followed or observed.”

See also the dictum of **Aderemi, JCA**, (as he then was) in **Re: Diamond Bank Ltd**.**[[50]](#footnote-50)**

Going through all the above quoted decisions by the various Justices of the Court of Appeal, it is obvious that the Court of Appeal regards garnishee proceedings as a separate and distinct case strictly between the judgment creditor and the garnishee, that is, the body or person that has custody of the judgment debtor’s money. The implication of these decisions of the Court of Appeal, as we have seen, is that the judgment debtor is not a party to garnishee proceedings and as captured by Salami JCA in ***P.P.M.C. Ltd. v. Delphi Pet. Inc.***,**[[51]](#footnote-51)** judgment debtors, in garnishee proceedings, are not competent to appeal as of right against the garnishee orders. In fact, while Omokri, J.C.A., in the case of ***U. B. A. v. Ekanem*[[52]](#footnote-52)** describes a judgment debtor in garnishee proceedings as “…a mere busy body meddling in affairs that do not concern him”, **Akaahs, J.C.A.**, (as he then was) in the same case describes a judgment debtor as a meddlesome interloper.[[53]](#footnote-53)

This appears to be the general trend in virtually all the cases already decided by the Court of Appeal. However, it is our position that most of these decisions fall short of what we consider to be the correct position of the law. The confusion must have arisen as a result of the failure or neglect of the courts, particularly in the cases highlighted above, to appreciate the distinction between garnishee order nisi proceedings and garnishee absolute proceedings *vis-a-vis* the issues placed before the court. An analytical consideration of some of these cases will reveal that the issues decided or pronounced upon did not relate to the issues submitted for determination, thereby, relegating the decisions to the level of *obiter dicta*. Regrettably, however, most of the pronouncements have been adopted in subsequent judgments as precedents. For instance, in ***Purification Tech. (Nig.) Ltd. v. Attorney General of Lagos State*[[54]](#footnote-54)** the matter revolves round the issue of setting aside order nisi. Rather than the court limiting itself to that, the pronouncement made, which has been subsequently followed in all other cases, is as if it covered both garnishee order nisi and garnishee order absolute proceedings.

In ***U. B. A. v. Ekanem*[[55]](#footnote-55)**the issue of parties in garnishee proceedings did not arise *per se* as the pronouncements in that regard were mere obiter. What was in issue was a case of staying further execution filed by the garnishee. Although, the case of ***Denton-West v. Muoma***,[[56]](#footnote-56) relates to the issue of garnishee order nisi, the statement made therein is verbose to the extent that it covers or is reputed to cover garnishee order nisi and garnishee order absolute proceedings. In ***P.P.M.C. Ltd. v. Delphi Pet. Inc.,*[[57]](#footnote-57)**the lead judgment by **Garba, J.C.A.** did not make any pronouncement on the issue of garnishee proceedings at all. However, **Salami, J.C.A. (as he then was)** dealt with the issue of garnishee order wherein it was held that the appellant (judgment debtor) could not appeal against a garnishee order not being a party to the proceedings. This position only gives an impression that the decision in that regard covers both garnishee order nisi proceedings and garnishee order absolute proceeding.

Therefore, in the determination the proper parties in garnishee proceedings, there is the basic need to distinguish the nisi proceedings from the absolute proceedings. In garnishee order nisi proceedings, due to the nature of the application brought, it can safely be said that the proceedings involve only the judgment creditor and the garnishee. It must be noted that the action is brought ex-parte thereby excluding the judgment debtor. As such, any decision to the effect that the judgment debtor is not a party at this stage can be said to be the correct position of the law. However, where the proceedings graduates to the level of garnishee order absolute, three parties are envisaged at this point. These are (a) the judgment creditor, (b) the judgment debtor; and (c) the garnishee. Stemming from these decisions of the Courts, experience has shown that the practitioners and the Judges are quick to conclude that a judgment debtor is not to be heard at all in any garnishee proceeding.

Whilst in respect of garnishee order nisi, the pronouncement of the various courts *vis-à-vis* the exclusion of the judgment debtor is unassailable, we caution that such statements as regards the proper parties to garnishee proceedings must always be qualified and restricted to the issue of garnishee order nisi.

However, with respect to garnishee order absolute proceedings, same cannot be said as the position of the law, to our mind, is permissible of the active participation of the judgment debtor at that stage. The pertinent question is: why must this be so?

First, by the wording of section 83(1) of the Sheriffs and Civil Process Act, the judgment debtor is expected before or after the rendering of the order nisi, to be examined orally. While it may not be practicable or realistic to do so before the grant of the order nisi, in order not for the judgment debtor to dissipate the asset, it is justifiable after the grant of the order nisi but before the making of the order absolute. The implication of this is that the judgment debtor is to be heard at this stage of the proceedings leading to the making of the order absolute. That this is so is further reinforced by the provision of section 83(2) that mandates the service of the order nisi on the judgment debtor at least fourteen days before the hearing wherein the order nisi will be made absolute. Without a doubt, this is to enable him appear in court on the adjourned date. By this act of service on the judgment debtor, it is simply an invitation to be heard thereby making him a party to the proceedings. The fact that section 83(2)[[58]](#footnote-58) makes it mandatory to serve the order nisi on the judgment debtor pre-supposes that the judgment debtor is not just a party but a necessary party to garnishee proceedings. If this was not intended to be so, the Act would not have made service of the order nisi on the judgment debtor mandatory. The purport of service of an order nisi on a judgment debtor was acknowledged in the case of ***Wema Bank Plc. v. Brastem-Sterr (Nig.) Ltd.*[[59]](#footnote-59)** where Nwodo, J.C.A., held thus:

“Under S. 83(2) Sheriffs and Civil Process Act, order nisi must be served with the originating process or any other order affecting the interest of the judgment debtor on him. Service of mandatory process is fundamental to the jurisdiction of the court when there is a specific provision that a party is to be served in a specific manner and it is not observed the jurisdiction of court against that party has not been invoked. Mohammed v. Mustapha (1993) 5 NWLR (Pt. 292) pg. 22.

The learned trial Judge erred when she held that the complaint of non-service is unmeritorious. The statutory provision on service is mandatory. Service of the order nisi on judgment debtor is a condition precedent to the jurisdiction of the court to make an order absolute. Consequently Issue 1 is resolved in favour of the appellant.”

See also the case of ***U. B. A. v. Ekanem***.**[[60]](#footnote-60)** Besides, in line with the principle in ***Skenconsult (Nig.) Ltd. v. Ukey***,[[61]](#footnote-61) service of process on a party is a fundamental condition precedent before a court can have competence and jurisdiction.

Further, by the provision of Order VIII, rule 8(1) of the Judgments (Enforcement) Rules alone, one cannot but agree that a judgment debtor is a necessary party to garnishee order absolute proceedings. The said Order VIII, rule 8(1) of the Judgments (Enforcement) Rules states thus:

“If no amount is paid into court, the court instead of making an order that execution shall issue, may, after hearing the judgment creditor, the garnishee, and the judgment debtor or such of them as appear, determine the question of the liability of the garnishee, and may make such order as to the payment to the judgment creditor of any sum found to be due from the garnishee to the judgment debtor and as to costs as may be just, or may make an order under section 87 of the Act.”

By the proper consideration of Order VIII, rule 8(1) of the Judgments (Enforcement) Rules quoted above, it is without doubt that a judgment debtor in garnishee proceedings is required to be heard with the judgment creditor and garnishee before an order nisi is made absolute. In fact, on the strength of this provision alone, one does not require any further reference to any provision of the law before one can come to a conclusion that a judgment debtor is a necessary party in garnishee order absolute proceedings as a judgment debtor is not only interested in the debt sought to be garnisheed but someone in whose absence the proceedings cannot be fairly dealt with. In the case of ***Green v. Green***,[[62]](#footnote-62)distinction was drawn between “proper parties”, “desirable parties” and “necessary parties” by Oputa JSC as follows:

“This now leads on to the consideration of the difference between “proper parties”, “desirable parties” and “necessary parties”. Proper parties are those who, though not interested in the Plaintiff’s claim, are made parties for some good reasons e.g. where an action is brought to rescind a contract, any person is a proper party to it who was active or concurring in the matters which gave the plaintiff the right to rescind. Desirable parties are those who have an interest or who may be affected by the result. Necessary parties are those who are not only interested in the subject-matter of the proceedings but also who in their absence, the proceedings could not be fairly dealt with. In other words the question to be settled in the action between the existing parties must be a question which cannot be properly settled unless they are parties to the action instituted by the plaintiff.”

Again, the provisions of section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria which bothers on fair hearing will not permit that a judgment debtor, whose debt is about to be attached, be excluded from garnishee order absolute proceedings as this would be construed as violating the principle of *audi alteram partem*. In the Supreme Court case of ***Leedo Presidential Motel v. B.O.N. Ltd***,**[[63]](#footnote-63)** Ogundare, J.S.C., while, among other things, considering the provision of section 33(1) of the 1979 Constitution (which provision is *impari materia* with section 36(1) of the 1999 Constitution) in relation to granting of sale of immovable property by an ex parte application, held thus:

“Although section 44 of the Sheriffs and Civil Process Law is silent as to how an application is to be made to the court by a judgment creditor for a writ of execution against the immovable property of the judgment-debtor, it is my respectful view that, as there are many things the court has to satisfy itself about, it is only but fair and just that the judgment-debtor be put on notice of the application. Order IV rule 16(2) lays down the evidence to be produced. From the nature of the evidence and upon which the court must satisfy itself before a writ of attachment and sale is ordered to issue, the civil rights and obligations of the judgment-debtor must obviously come up for determination. I cannot see how such a determination can be made behind the back of the judgment-debtor without breaching his constitutional right to fair hearing under section 33 (1) of the Constitution.”

Finally, in cases where the certificate of a judgment obtained in a State has been registered in another State where garnishee proceedings are initiated, section 109(1)[[64]](#footnote-64) puts the inclusion of the judgment debtor as a party to garnishee order absolute proceedings beyond dispute by giving the judgment debtor an additional platform to apply for a stay of proceedings. The said section 109 provides thus:

“(1) The court in which any such certificate of a judgment has been registered may, on the application of the judgment debtor order a stay of proceedings on such certificate.”

It is in light of the above that one cannot but agree with the lead judgment of Ogunwumiju, J. C. A. in the case of **Fidelity Bank Plc. v. Okwuowulu**[[65]](#footnote-65) when His Lordship held as follows:

“A garnishee proceedings can be described in two stages; the first stage is the process of getting an order nisi. The order nisi directs the garnishee to appear in court on a specified date to show cause why an order should not be made upon him for payment to the judgment creditor the amount of the debt owed to the judgment debtor. This is usually done *ex parte* and limited to the judgment creditor and the court.

The second stage is where on the return date, the garnishee does not attend, or does not dispute the debt claimed to be due from him to the judgment debtor, the court may subject to certain restrictions, make the garnishee order absolute under which the garnishee is ordered to pay to the judgment creditor the amount of debt due from him to the judgment debtor, or so much of it as is sufficient to satisfy the judgment debt together with the cost of the proceedings and cost of garnishee. This later proceeding is tripartite between the judgment debtor, judgment creditor and the garnishee. This is because on the return date all parties must have been served and given an opportunity to dispute liability or pray that the order *nisi* be discharged for one cause or the other.”

In the earlier case of **N.A.O.C. v. Ogini,[[66]](#footnote-66)** His Lordship Ogunwumiju, J.C.A in His Lordship’s concurring judgment laid out the correct position of the law as follows:

“If the judgment creditor knows that the judgment debtor has an amount of money with any Bank or institution, he will as Garnishor file for an ex parte application to be supported by an affidavit in Form 23 of the Judgment Enforcement Rules (JER) for an order that the Garnishee (in this case U.B.A. Plc.) shall show cause why he should not pay the amount due to the judgment debtor to him. These proceedings are strictly ex parte between the Garnishor (judgment creditor) and the Garnishee (the Bank or institution). Where the court grants the order nisi on the garnishee, the Registrar through the Sheriff of the court must serve on the garnishee, the judgment creditor and the judgment debtor the Order nisi on Form 26 of JER. The registrar must then fix a date not less than 14 days after the service of the order nisi on the judgment creditor, the judgment debtor and the garnishee for hearing. ***This subsequent hearing envisages a tripartite proceedings in which all interests are represented. That is when the judgment debtor has the opportunity to convince the court to discharge the order nisi by filing affidavits to that effect.*** After that hearing on notice, the court may discharge the order nisi or make it an order absolute.

Thus, the judgment enforcement rules envisages two proceedings, one ex parte and the other one on notice. I agree with the learned respondent’s counsel and my learned brother that there can be no appeal against the order nisi made ex parte. See S. 14(1) of the Court of Appeal Act, Cap. C36, Laws of the Federation, 2004. On the other hand, the garnishee order absolute being proceedings in which all parties have been heard and the interest of the judgment debtor in the money in custody of the Garnishee determined is one in which an appeal can lie to this court.” (Emphasis ours).

See also the decision of Saulawa, J.C.A. in the more recent case of ***C.B.N. v. Auto Import Export*[[67]](#footnote-67)** where His Lordship held that *“…both the Garnishor and the garnishee as well as the judgment debtor constitute the parties to the proceedings.”* See also the dictum of Chukwuma-Eneh, J.C.A. (as he then was) in ***Sokoto State Govt. v. Kamdex (Nig.) Ltd***.[[68]](#footnote-68) where His Lordship held that

“The proceeding envisages three parties to it namely, the judgment creditor (garnishor), the judgment debtor and the garnishee in the instant case - the Standard Trust Bank Ltd. – 3rd appellant.”

With the above decisions of the court in ***Fidelity Bank Plc. v. Okwuowulu,[[69]](#footnote-69)******N.A.O.C. v. Ogini,[[70]](#footnote-70) C.B.N. v. Auto Import Export,[[71]](#footnote-71)*** ***Sokoto State Govt. v. Kamdex (Nig.) Ltd[[72]](#footnote-72)*** and the provisions of sections 83(2) and 109(1) of the Sheriffs and Civil Process Act, Order VIII, rule 8(1) of the Judgments (Enforcement) Rules and section 36(1) of the 1999 Constitution, it is settled that garnishee order absolute proceedings involves a tripartite proceedings in which all interests are represented and heard before an order nisi is made absolute hence, the judgment debtor is a necessary party. Of course, it is agreed that a judgment debtor cannot appeal against an order nisi since same was made pursuant to an ex parte application to which a judgment debtor is not a party. However, after the service of the order nisi on him, the judgment debtor may convince the court by way of an affidavit to discharge the order nisi, for instance, where it is proven that the judgment sum has been subsequently liquidated, or such sum as constitute part has been paid, or any other vitiating factor based on which the trial court has the power to set aside its own judgment[[73]](#footnote-73) or even payment or liquidation of the judgment sum which is being sought to be realised by way of enforcement. Where the court refuses to discharge the order nisi and makes the order nisi absolute, the judgment debtor, being a necessary party, can appeal as of right since the order absolute is regarded as a final decision of the court.[[74]](#footnote-74)

**Garnishee Proceedings and Stay of Execution (Six or Half-a-dozen)**

The position of the law is that although an appeal does not operate as stay of execution, where an appeal has been filed and served and there is an application for stay of execution, parties are prohibited from tampering with the subject matter of the appeal as such could foist a *fait accompli* on the appellate court. This much was held by the Supreme Court in the case of **Vaswani Trading Company v. Savalakh & Company**,[[75]](#footnote-75) where **Coker, J.S.C.** held thus:

“Whilst by virtue of the provisions of the section, an appeal or the filing thereof could not *eo ipso* operate as stay of execution, clearly in practice, the position should be different where apart from filing an appeal, the prospective appellant also files an application in this court, by which a stay of execution of the same judgment is sought. In such circumstances, a general appraisal of the whole situation is absolutely necessary and it is most desirable that the court should ensure that, at that stage of the proceedings, it is not possible for any party to present it with a fait accompli.”

In the like manner, Thomas, J.C.A., in ***Julius Berger (Nig.) Plc. v. T. R. Comm. Bank*,[[76]](#footnote-76)** while concurring with the lead judgment, held thus:

“Once a notice of appeal is filed and served on the other party and the lower court, especially in the instant appeal where the applicant is challenging the judgment sum and has urged at the lower court for stay of execution, it is a clear position that the appellate court is now in total control of the matter, and the other parties and the lower court are prohibited from tampering with the respondent.”

It is pertinent to state that the Court of Appeal appears to have taken another position on the effect of a pending application for stay of execution when garnishee proceedings are involved. In this regard, the Court of Appeal has held that there exists distinction between execution of judgments and other methods of enforcing judgments, like garnishee proceedings. Therefore, it has been held that the existence of an application for stay of execution does not prevent a judgment creditor from adopting garnishee proceedings as means or other method of enforcement of judgment. In the case of ***Purification Tech. (Nig.) Ltd. v. Attorney General of Lagos State*[[77]](#footnote-77)**, Galadima, J.C.A., held thus:

“Again, given the distinction that exists between execution and garnishee proceedings for the enforcement of a judgment, I do not think the existence of an application seeking for an order staying execution of a judgment does preclude a judgment creditor from seeking to use some other legal method to enforce judgment.

There is clear distinction between execution of judgments and other methods of enforcing judgments, such as garnishee proceedings. The distinction is brought out by the definition of “writ of execution” in section 19 of the Sheriffs and Civil Process Act, Cap. 407, Laws of the Federation, 1990. Writ of execution includes writ of attachment and sale, writ of delivery, writ of possession and writ of sequestration. It excludes a garnishee proceedings”.

The above quote was exactly quoted with approval by Owoade, J.C.A. in the case of N.A.O.C. v. Ogini**.[[78]](#footnote-78)** Similarly, in U.B.A. Plc. v. Ekanem,**[[79]](#footnote-79)** Orji-Abadua, J.C.A. also followed the above position and held thus:

“Be that as it may, it cannot be overemphasized that there is a distinction between the enforcement of a judgment by a writ of execution, and by garnishee proceedings. In Purification Techniques (Nig) Ltd. v. Attorney General of Lagos State (2004) 9 NWLR (Pt. 879) p. 665 it was held that, the existence of an application seeking for an order of stay of execution of a judgment does not preclude a judgment creditor from seeking to use garnishee proceedings to enforce the judgment. It was further held that the contention of the respondent that the appellant was not entitled to enforce the judgment in its favour by garnishee proceeding because the respondent had filed an application for stay of execution is untenable.”

See also the case of Nitel Plc. v. I. C. I. C. (Directory Publishers) Ltd**.**[[80]](#footnote-80)

It is submitted that this position of the Court of Appeal that there exists a distinction between execution of judgments and other methods of enforcing judgment such as garnishee proceedings is a distinction without a difference especially with respect to the targeted effect and consequence. It is, at best, with due respect to their lordships, a distinction between six and half a dozen. Hence, the effort to enable a judgment creditor, by way of garnishee proceedings, still proceed to enforce a judgment against which there is an application for stay of execution cannot be correct in any way. This is so because, it all boils down to placing a state of *fait accompli* on the appellate court which the law, as held by the Supreme Court in ***Vaswani Trading Company v. Savalakh & Company*[[81]](#footnote-81)** frowns against and which law has been consistently followed by the Supreme Court in subsequent cases till date. The reasons for maintaining that this position of the Court of Appeal cannot be correct are as follows:

1. In all these cases, while making the distinction between execution of judgments and other methods of enforcing judgments like garnishee proceedings, the Court of Appeal wrongly relied on the definition of ‘writ of execution’ in section 19 of the Sheriffs and Civil Process Act. Unfortunately, the provision does not seem to be aiming at such distinction.
2. Purposively, the distinction sought to be made by the Court of Appeal fails as all the various methods of enforcing judgments seek to achieve the same purpose. It all boils down to a process or way by which a judgment debtor realises the fruit of his judgment. Whatever process of enforcement of judgment is adopted while an appeal and an application for stay of execution are pending, it will definitely put the appellate court in a complete state of helplessness where that process of enforcement of judgment is completed and thus deny a judgment debtor his constitutional right of appeal.
3. In defining ‘writ of execution’ by reference to section 19 of the Sheriffs and Civil Process Act, per Galadima, J.C.A., in ***Purification Tech. (Nig.) Ltd. v. Attorney General of Lagos State*,[[82]](#footnote-82)** the Court incidentally held that the definition ‘…excludes garnishee proceedings’. This gives an impression that this clause: ‘it excludes garnishee proceedings’ is part of the definition provided by the said section 19 of the Sheriffs and Civil Process Act. It would have been more apposite if the learned Justice had stated after the definition of ‘writ of execution’ that ‘it does not include garnishee proceedings’. In fact, it was this that led Owoade, J.C.A., in ***N.A.O.C. v. Ogini*[[83]](#footnote-83)** to wholly rely on the dictum of Galadima, J.C.A. (as he then was) in *Purification Tech. (Nig.) Ltd. v. Attorney General of Lagos State* and also included the clause ‘It excludes garnishee proceedings’ which also gives an impression that the clause is part of the definition of ‘writ of execution’ provided in section 19 of the Sheriffs and Civil Process Act. Section 19 of the Act defines ‘writ of execution’ thus:

“‘writ of execution’ includes writ of attachment and sale, writ of delivery, writ of possession and writ of sequestration.”

1. By the foregoing definition of ‘writ of execution’ in section 19,[[84]](#footnote-84) the use of the word ‘includes’ means that those modes of enforcement included in the definition are not exhaustive. Black’s Law Dictionary[[85]](#footnote-85) defines the word “includes” to mean “To contain as a part of something”. In the case of ***P. & C.H.S. Co. Ltd. v. Migfo (Nig.) Ltd.*[[86]](#footnote-86)** Galadima J.S.C. defined the word ‘includes’ thus:

“The word ‘includes’ when used in a statute or written enactment can enlarge the scope of the subject matter it qualifies or tend to qualify, only to an extent permitted by law.”

Also, in ***Uhunmwangho v. Okojie***,[[87]](#footnote-87) Nnaemeka-Agu, J.S.C. defined the word ‘include’ as follows:

“The word includes is of course used in order to enlarge the meaning of the words and phrases occurring in the body of the statute. It means that the types of orders contemplated must be construed as comprehending not only the three types of orders enumerated in the definition but also other similar orders:”

The implication of the meaning ascribed to the word ‘includes’ is that ‘writ of execution’ may also include garnishee proceedings. This is buttressed by the provision of Order VIII, rule 7(1) of the Judgments (Enforcement) Rules which defines ‘writ of execution’ as follows:

“Execution against the garnishee under section 86 of the Act shall be by a writ of execution in Form 27.”

Based on the provision of Order VIII, rule 7(1) of the judgments Enforcement) Rules, one can safely say that the definition of ‘writ of execution’ will also include garnishee proceedings.

1. Further, the Court of Appeal’s decisions appear to somewhat give different meanings to the phrase ‘execution of judgment’ and the phrase ‘enforcement of judgment’. From the various decisions of the learned Justices, while the word ‘execution’ was given a restricted meaning as those modes contained in the definition of ‘writ of execution’ in section 19, the word ‘enforcement’ was given a broader meaning.

The decisions further imply that while a pending application for stay of execution will restrain a judgment creditor from ‘executing’ his judgment while using any of the methods of execution included in the definition of ‘writ of execution’ in section 19, an application for stay of execution will not restrain a judgment creditor from enforcing his judgment by using other methods of execution not contained in the definition of ‘writ of execution’ in the said section 19. For instance, it amounts to saying that garnishee proceedings, which is not contained in the said definition, cannot be restrained by way of application for stay of execution as garnishee proceedings is not a method of execution of judgment.

This distinction, it is submitted, was further brought out by way of further confusion by the learned Justices of the Court of Appeal in Denton-West v. Muoma,[[88]](#footnote-88) wherein Their Lordships granted a stay of execution of the original judgment and *“all or any enforcement processes pending the determination of the appellant/applicant’s appeal against the said judgment”* but went ahead to refuse the application to set *“aside the Garnishee Order Nisi and further hearing of the garnishee proceedings by the lower court”*. Their Lordships then left the parties to place whatever interpretation as might suit each of them as the judgment debtor could contend that *all or any enforcement processes* had been stayed while the judgment creditor could argue that the garnishee order nisi was not set aside and neither was further hearing of the garnishee proceedings pending before the lower court stayed by Their Lordships of the Court of Appeal. It is a case of the more you look, the less you see!

In an apt consideration, the fact is that the words ‘execution’ and ‘enforcement’ both have the same meaning as they are used interchangeably. This is why Fidelis Nwadial[[89]](#footnote-89) defines execution of judgment as thus:

“By execution of a judgment is meant the enforcement of that judgment, that is, giving effect to it. It is the process whereby a judgment or order of a court is enforced or given effect to according to law”.

It is pertinent to note that the law as well as practice and procedure governing garnishee proceedings in Nigeria appears to be in tandem with the law and practice and procedure in England. This much was held in the case of **Sokoto State Govt. v. Kamdex (Nig.) Ltd**.[[90]](#footnote-90)when Chukwuma-Eneh, J.C.A. held thus

“Although, the law as well as practice and procedure governing garnishee proceeding locally appears codified as per the Sheriffs and Civil Process Act and the judgment (enforcement) Rules they are (*mutatis mutandis*) in tandem with the law and practice and procedure in England. It is for this that reference are constantly being made to England cases as regards the guiding principles in such matters; for instance the case of *Richardson v. Richardson* (1927) AER (Reprint) 92.”

It is based on the above decision that we are relying on the English case of ***Re: Overseas Aviation Engineering (G. B.), Ltd.***,[[91]](#footnote-91) where Lord Denning, M.R, had this to say on the meaning of “execution”:

“In the light of what I said earlier in this judgment, I propose to approach that section as it now stands without recourse to previous state of the law. So approaching it, I am clearly of opinion that when a judgment creditor obtains a judgment charge on a specific land of a company, he thereby issues “execution” against the land of the company.

The word “execution” is not defined in the Act. It is, of course, a word familiar to lawyers. “Execution” means, quite simply, the process for enforcing or giving effect to judgment of the court: and it is “completed” when the judgment creditor gets the money or other thing awarded to him by the judgment. That this is the meaning is seen by reference to that valuable old book “Termes de la Ley”, where it is said:

“*Execution* is, where judgment is given in any action, that the plaintiff shall recover the land, debt, or damages, as the case is; and when any writ is awarded to put him in possession, *or to do any other thing whereby the plaintiff should the better be satisfied his debts or damages*, that is called a writ of *execution*; and when he hath the possession of the land, or is paid the debt or damages, or hath the body of the defendant awarded to prison, then he hath *execution*.”

The same meaning is to be found in *Blackman v. Fysh* (5), when KEKEWHICH, J., said that execution means the “process of law for the enforcement of judgment creditor’s right and in order to give effect to that right”. In cases when execution was had by means of a common law writ, such as fiery facias or elegit, it was *legal* execution: when it was had by means of an equitable remedy, such as the appointment of a receiver, then it was *equitable* execution. In either case it was “execution” because it was the process for enforcing or giving effect to the judgment of the court. Applying this meaning of the word “execution”, I should have thought it plain that when a judgment creditor gets a charge on the debtor’s property, it is a form of “execution”, for it is a means of enforcing the judgment. I do not think that *Re Hutchinson, Ex p. Hutchinson* (6) should be taken to decide the contrary. The reasoning is obscure, and in any event it must be read in the light of later cases. A charging order on shares has since been said to be “in the nature of an execution”

Further to the above, it can be safely contended that the word ‘execution’ is the standard term intended to embrace enforcement process as the term is often used than the word ‘enforcement’. This is the reason why the various rules of court in the different States of the Federation talk about stay of execution of judgment and not stay of enforcement of judgment.

At this juncture, it is important to note that the right to apply for stay of execution is contingent upon the filing of an appeal. Hence, in the determination of the competence to so apply for stay of execution, the locus to file an appeal is crucial. However, in doing this, the determination of the type of proceedings to adopt is of fundamental consideration if the distinction between enforcement and execution vis-à-vis the proper parties to garnishee proceedings is regarded valid. Thus, where it is garnishee order nisi proceedings, the right of appeal and, by extension, to apply for stay of execution only resides in the judgment creditor and the garnishee, thereby excluding the judgment debtor. But in the case of garnishee order absolute, proceedings as indicated above, the right to appeal and, by extension, right to apply for stay of execution also inheres in the judgment debtor. This is further buttressed by the provision of section 109(1)[[92]](#footnote-92) which confirms the right of the judgment debtor to seek for stay of proceedings in respect of Garnishee actions Therefore, all decisions running contrary to this position should be considered to have been given *per incuriam.* For instance, in the earlier case of **Nitel Plc. v. I. C. I. C. (Directory Publishers) Ltd.,**[[93]](#footnote-93)the dictum of Omoleye J.C.A. where His Lordship stated as follows:

“having found as earlier on stated in this ruling that, the judgment debtor is a total stranger to a garnishee proceeding, especially after a garnishee order absolute has been made, it becomes manifestly clear that he, that is, the judgment debtor, cannot be heard on it except in a proper appeal”

is a judgment given *per incuriam.* Same applies to all the decisions earlier cited on the first issue[[94]](#footnote-94) already discussed above.

**Proceeding Against All Known Banks in the Territory: Casting the Net**

By section 83(1),[[95]](#footnote-95) a judgment creditor who intends to enjoy the fruit of his judgment, is expected to commence garnishee proceedings against garnishees that he has ascertained are indebted to the judgment creditor. However, in practice, it is common amongst virtually all practitioners to commence garnishee proceedings against all banks as garnishees without ascertaining which of the banks are indebted to the judgment debtor. This method of making all banks garnishees in garnishee proceedings is regarded as casting the net while hoping that it catches a fish or two. The practice does not only contravene the provision of the law but also imposes undue obligations on the garnishees all of whom have to respond through their appearances mostly by legal practitioners in a matter that have no bearing to them.

It is substantially yet to be the practice for the bench or the judges to deprecate the practice and where, and if necessary, impose sanctions on the judgment creditor/garnishor. It must be said that the expectation is for the judgment creditor to have conducted necessary investigation into the assets of the judgment debtor before commencing garnishee proceedings. The courts are hereby enjoined to discourage this practice as a lazy way out. In this regard, the Magistrates’ Courts (Regulatory Enforcement Procedure) Rules, 2009 made pursuant to The Magistrate Court Law 2009 of Lagos State appears to have done better in the sense that it does not only require a deponent to the affidavit to state that the garnishees is indebted to the judgment debtor but also requires the deponent to state the sources of the deponent’s information or grounds for his belief.[[96]](#footnote-96)

**Is Order Nisi A Dragon?**

Once an order nisi is granted and served on the garnishee, it binds the amount standing to the credit of the judgment debtor. The question however is: is it the whole sum standing to the credit of the judgment debtor or such sum as been claimed by the judgment creditor that the order nisi should bind? Again, in this regard, the law is that it is such sum that is sought to be garnisheed that the order nisi binds and not the entire sum in the hands of the garnishee standing to the credit of the judgment debtor that it binds.

However, in practice, the garnishee, once served with the order nisi takes the order to bind the entire assets of the judgment debtor thereby refusing to honour any further request by the judgment debtor. Possibly due to the pronouncement of some of our courts on the effects of such order nisi, the garnishees have taken it to mean the entire sum standing to the credit of the judgment debtor. The case of ***U. B. A. v. Ekanem***[[97]](#footnote-97) is an example as Orji-Abadua, J.C.A. held as follows:

“By section 85 and 86, the moment, the order nisi is served on the garnishee, the judgment debtor’s money in its custody is automatically attached.”

See also the cases of **Sokoto State Govt. v. Kamdex (Nig.) Ltd**.[[98]](#footnote-98) This cannot be the correct position as in most cases one finds the garnishee banks having directed all its branches nationwide to comply with the order notwithstanding that a specific account of the judgment debtor in a single branch of the garnishee has fulfilled the aim of the garnishee proceedings. The consequence is a total paralysis of the business of the judgment debtor until the garnishee absolute is granted.

Ancillary to this discourse is the issue of whether any payment made into the judgment debtor’s account subsequent to the service of the order nisi on the garnishee will bind such later lodgement. Again the practice of some garnishees is to immediately wharehoused the later funds alongside the existing sum as at the time of service of the order nisi. This undoubtedly contradicts the position of the law as the order nisi was obtained in respect of the existing sum as at the time of service and issuance of the order but not beyond. Hence, judgment debtor must be at liberty to transact on the subsequent lodged in funds without any inhibition once there is no subsequent order of the court. That this is so was underscored by His Lordship, Aderemi J.C.A. in **Sokoto State Govt. v. Kamdex (Nig.) Ltd**.[[99]](#footnote-99)held thus:

“It must be emphasised that it is only money standing to the credit of the judgment-debtor as at the time the *order nisi* was served that is attachable. The order nisi will not attach any money paid into the bank account of the judgment-debtor after its service nor will it affect the money of other people standing in the bank account of the judgment-debtor which he (judgment- debtor) has no right to dispose…”

**Conclusion**

From the discussions above, it is humbly submitted that the decisions of the Court of Appeal that garnishee proceedings is strictly between the judgment creditor and garnishee regardless of the nature of proceedings and also that an application for stay of execution does not preclude a judgment creditor from using other methods of enforcement of judgment, such as garnishee proceedings, are still the law today simply because one is not aware of any decision of the Supreme Court on the points.

However, for now, one is gladdened by the later decisions of the Court of Appeal in ***Fidelity Bank Plc. v. Okwuowulu,[[100]](#footnote-100)*** *and* ***C.B.N. v. Auto Import Export,[[101]](#footnote-101)*** which seem to be throwing light in this directions. It is believed that the Supreme Court would tow the line of such later decisions once the opportunity arises in the nearest feature. Beyond that, it is equally our belief that the practice of fishing as adumbrated earlier must be condemned by the courts at the earliest opportunity and the attitude of garnishees in putting absolute seal on the entire funds of the judgement debtor must equally be discouraged.

Having said this, it is important for us to state that we are not oblivious of the challenges inherent in our judicial system in taking some of the positions earlier highlighted but we are of the strong view that legislative intervention will better serve our purpose than gross misconception of the law. In this wise, we are alluding to the issue of oral examination of the judgment debtor and that of right of hearing during garnishee order absolute proceeding. The fear of course is justifiable that permitting the judgment debtor or granting him audience might lead or amount to further re-litigating the suit. This is the case in view of our jaundiced legal system which is associated with extreme delay. That, however, does not justify doing violence to the provisions of the law as it stands. Should this have the potential of abuse, a review of the provisions of the law might be required to expressly exclude both the oral examination as well as the right of audience granted the judgment debtor as it is the case in Section 109 of the Sheriffs and Civil Process Act, for instance.

Be that as it may, it is advised that as counsel and minister in the temple of justice, we should be persistent in making the courts to tow the rational part when faced with these basic issues in garnishee proceedings. As the body of case law stands today, it seems to be more *per incuriam* the provisions of the relevant statute.

1. Dr Muiz Banire, Founder & Principal Partner of M. A. BANIRE & ASSOCIATES. I acknowledge the research assistance given by Kunle Adegoke, Bayo Badmus, Tayo Olatunbosun and Tomiwa Ogundipe whilst taking full responsibility for all the views expressed in this Paper. [↑](#footnote-ref-1)
2. Afe Babalola: Enforcement of Judgments, First Edition, (Intec Printers Limited, 2003) 1. [↑](#footnote-ref-2)
3. Fidelis Nwadialo: Civil Procedure in Nigeria, Second Edition (University of Lagos Press, 2000) 1011. [↑](#footnote-ref-3)
4. Halsbury’s Laws of England, Fourth Edition, (Reed Elsevier (UK) Ltd 1976, 2002) Vol. 17(1), page 128. [↑](#footnote-ref-4)
5. Black’s Law Dictionary, Eight Edition, 2004, 702. [↑](#footnote-ref-5)
6. Section 19 of the Sheriffs and Civil Process Act, 1945 LFN, Cap S6, 2011. [↑](#footnote-ref-6)
7. See also Fidelis Nwadialo (supra), 967. [↑](#footnote-ref-7)
8. Halsbury’s Laws of England (supra), 18. [↑](#footnote-ref-8)
9. Fidelis Nwadialo (supra), 967. [↑](#footnote-ref-9)
10. Black’s Law Dictionary (supra), 861. [↑](#footnote-ref-10)
11. Ibid. [↑](#footnote-ref-11)
12. C.B.N. v. Auto Import Export [2013] 2 NWLR (Pt.1337) 80 at 126, para. G. [↑](#footnote-ref-12)
13. Black’s Law Dictionary (supra), 702 refers to judgment creditor as ‘Garnisher’ and defines same as “A creditor who initiates a garnishment action to reach the debtor’s property that is thought to be held or owed by a third party (the garnishee). [↑](#footnote-ref-13)
14. Section 19 of the Sheriffs and Civil Process Act. [↑](#footnote-ref-14)
15. See also Fidelis Nwadialo (Supra), 967. [↑](#footnote-ref-15)
16. Halsbury’s Laws of England (supra), 18. [↑](#footnote-ref-16)
17. Black’s Law Dictionary (Supra), 702. [↑](#footnote-ref-17)
18. [2001] 6 NWLR (Pt. 708) 115 at 123, paras. G-H. [↑](#footnote-ref-18)
19. [1996] 10 NWLR (Pt. 478) 381 at 389, paras. G-H [↑](#footnote-ref-19)
20. [2005] 8 NWLR (Pt. 928) 458 at 484, paras. D-F. [↑](#footnote-ref-20)
21. [2008] 6 NWLR (Pt. 1083) 418 at 442, para. D. [↑](#footnote-ref-21)
22. [2004] 9 NWLR (Pt. 879) 665 at 678 paras. E-G. [↑](#footnote-ref-22)
23. [2009] 16 NWLR (Pt. 1167) 356 at 387, paras. F-G. [↑](#footnote-ref-23)
24. [2008] 6 NWLR (Pt. 1083) 418 at 440, paras. G-H. [↑](#footnote-ref-24)
25. [2010] 6 NWLR (Pt. 1190) 207 at 225, para. C-D. [↑](#footnote-ref-25)
26. [2013] 2 NWLR (Pt. 1337) 80 at 128, paras. E-F. [↑](#footnote-ref-26)
27. Section 85 of the Sheriffs and Civil Process Act, 1945, Cap. S6, LFN 2011 provides thus: Service of an order that a debt due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the court may direct, shall bind such debt in his hands.” (Emphasis ours). See also sections 83, 86 and 90 of the Sheriffs and Civil Process Act where the words “debt due” or “amount due” has been used. [↑](#footnote-ref-27)
28. (1949) 2 All ER 94 at 95, para. E- G. See also the cases of C.B.N. v. Auto Import Export [2013] 2 NWLR (Pt. 1337) 80 at 126, paras. G-H and Webb v. Stenton (1883) 11 Q.B.D. 518; L.J.Q.B. 584 [↑](#footnote-ref-28)
29. Quarre: whether loan amount in a judgment debtor’s bank account is attachable as debt due to him to satisfy a judgment debt? See FIB Plc. v. Effiong [2010] 16 NWLR (Pt. 1218) 199 where the Court of Appeal held that such amount in the bank account of a judgment debtor which is a loan from his bankers cannot constitute debt standing to his credit as to be attachable in a garnishee proceedings. [↑](#footnote-ref-29)
30. In Lagos State, the Sheriffs and Civil process Act is contained in the Laws of Lagos State of Nigeria Cap. S6. [↑](#footnote-ref-30)
31. Sheriff and Civil Process Act. [↑](#footnote-ref-31)
32. Order VIII, rule 3(1)(b) of the Judgments (Enforcement) Rules. [↑](#footnote-ref-32)
33. Judgments (Enforcement) Rules. [↑](#footnote-ref-33)
34. Section 83(1) of the Sheriffs and Civil Process Act. [↑](#footnote-ref-34)
35. Section 83(2) of the Sheriffs and Civil Process Act. [↑](#footnote-ref-35)
36. Section 85 of the Sheriffs and Civil Process Act. [↑](#footnote-ref-36)
37. Section 92 of the Sheriffs and Civil Process Act. [↑](#footnote-ref-37)
38. Order VIII, rule 5(1) of the Judgments (Enforcement) Rules. [↑](#footnote-ref-38)
39. Order VIII, rule 5(2) of the Judgments (Enforcement) Rules. [↑](#footnote-ref-39)
40. Section 87 of the Sheriffs and Civil Process Act. [↑](#footnote-ref-40)
41. Section 88 of the Sheriffs and Civil Process Act [↑](#footnote-ref-41)
42. See the case of In re: Diamond Bank Ltd. [2002] 17 NWLR (Pt. 795) 120 at 134, para. G. [↑](#footnote-ref-42)
43. Order 6 of the Magistrates’ Courts (Regulatory Enforcement Procedure) Rules, 2009 is more elaborate than the Sheriffs and Civil Process Act. However, due to constraint of space, we shall not be able to discuss same. [↑](#footnote-ref-43)
44. Order VIII, rule 1 of the Judgments (Enforcement) Rules. [↑](#footnote-ref-44)
45. [2013] 6 NWLR (Pt. 1349) 197 at 213-214, paras. H-D. [↑](#footnote-ref-45)
46. Afe Babalola (supra), 91. [↑](#footnote-ref-46)
47. [2008] 6 NWLR (Pt. 1083) 418 at 442, paras D-E. [↑](#footnote-ref-47)
48. [2005] 8 NWLR (Pt. 928) 458 at 484, paras C-G. [↑](#footnote-ref-48)
49. [2010] 6 NWLR (Pt. 1190) 207 at 222, para. B-D. [↑](#footnote-ref-49)
50. [2002] 17 NWLR (Pt. 795) 120 at 133, paras. C-E. [↑](#footnote-ref-50)
51. [2005] 8 NWLR (Pt. 928) 458 at 484-486. [↑](#footnote-ref-51)
52. [2010] 6 NWLR (Pt. 1190) 207 at 227, para. E. [↑](#footnote-ref-52)
53. At page 226, para G. [↑](#footnote-ref-53)
54. [2004] 9 NWLR (Pt. 879) 665. [↑](#footnote-ref-54)
55. [2010] 6 NWLR (Pt. 1190) 207. [↑](#footnote-ref-55)
56. [2008] 6 NWLR (Pt. 1083) 418. [↑](#footnote-ref-56)
57. [2005] 8 NWLR (Pt. 928) 458. [↑](#footnote-ref-57)
58. Sheriffs and Civil Process Act. [↑](#footnote-ref-58)
59. [2011] 6 NWLR (Pt. 1242) 58 at 80, paras A-D. [↑](#footnote-ref-59)
60. [2010] 6 NWLR (Pt. 1190) 207 at 220, para. G. [↑](#footnote-ref-60)
61. (1981) 1 SC 4 at 15, lines 34-37. [↑](#footnote-ref-61)
62. [1987] 3 NWLR (Pt. 61) 480 at 493, paras. D-F. [↑](#footnote-ref-62)
63. [1998] 10 NWLR (Pt. 570) 353 at 378-379, paras. H- B. [↑](#footnote-ref-63)
64. Sheriffs and Civil Process Act. [↑](#footnote-ref-64)
65. [2013] 6 NWLR (Pt. 1349) 197 at 213-214, paras. H-C. [↑](#footnote-ref-65)
66. [2011] 2 NWLR (Pt. 1230) 131 at 152-153, paras. F-C. [↑](#footnote-ref-66)
67. [2013] 2 NWLR (Pt. 1337) 80 at 127 paras F-G. See also the case of Sokoto State Govt. v. Kamdax (Nig.) Ltd. [2004] 9 NWLR (Pt. 878) 345 at 380, para. D. Per Chukwuma- Eneh J.C.A. (as he then was) [↑](#footnote-ref-67)
68. [2004] 9 NWLR (Pt. 878) 345 at 380, para D. [↑](#footnote-ref-68)
69. [2013] 6 NWLR (Pt. 1349) 197 [↑](#footnote-ref-69)
70. [2011] 2 NWLR (Pt. 1230) 131. [↑](#footnote-ref-70)
71. [2013] 2 NWLR (Pt.1337) 80. [↑](#footnote-ref-71)
72. [2004] 9 NWLR (Pt. 878) 345. [↑](#footnote-ref-72)
73. There are certain circumstances in which a trial court can set aside its own judgment. These are (1) where the order is a nullity and the person affected by the order is entitled ex debito justitiae to have it set aside. See Abana v. Obi [2005] 6 NWLR (Pt. 920) 183 @ 203; (2) where the procedure adopted is such as to deprive the decision of the character of a legitimate adjudication. See Abana v. Obi (supra); (3) Where the decision breaches the fundamental right of a party. See Lagos State Development and Property Corporation v. Adeyemi-Bero [2005] 8 NWLR (Pt. 927) 330 @ 349 – 350; 352; (4) Where the decision will work injustice on one of the parties, not necessarily the party against whom the order was actually made. LSDPC v. Adeyemi-Bero (supra); (5) Where the order sought to be set aside if not set aside and proceedings continue would result in a null judgment on the merit. See Salisun Idris Yan Siliyun & 6 Others v. Alhaji Dan Mashi & 3 Ors (1975) 1 NMLR 55 @ 58. It is submitted that where the judgment debtor is precluded in any of such instances above from contesting the garnishee absolute proceedings, definitely, his right to fair hearing would have been defeated and gross injustice would have been done via garnishee proceedings. [↑](#footnote-ref-73)
74. U.B.N. Plc. v. Boney Marcus Ind. Ltd [2005] 13 NWLR (Pt. 943) 654 at 665, paras. A-C, Per Katsina-Alu, J.S.C., held thus:

    “The above was the final garnishee order. In other words, it was an order absolute. It was a final decision of the court. A judicial decision is said to be final when it leaves nothing to be judicially determined thereafter in order to render it effective and capable of execution. That is to say that the matter would not be brought back to the court itself for further adjudication. Clearly, by the order of the court above, the trial court had determined the rights of the parties before it. I must state again that the appellant promptly complied with the order of the court.” See also U. B. A. v. Ekanem (supra) at 225, para E. [↑](#footnote-ref-74)
75. (1972) 12 S.C 50 at 57, Lines 24-32. [↑](#footnote-ref-75)
76. [2007] 1 NWLR (Pt. 1016) 540 at 549, paras. B-C. [↑](#footnote-ref-76)
77. [2004] 9 NWLR (Pt. 879) 665 at 678 paras E-G. [↑](#footnote-ref-77)
78. Supra at 147, para D-G. [↑](#footnote-ref-78)
79. Supra at 224, paras. C-E. [↑](#footnote-ref-79)
80. [2009] 16 NWLR (Pt. 1167) 356 at 388, para D. Several other decisions of the Court of Appeal tend towards this position but as a result of constraint of space we will not be able to examine the other cases. [↑](#footnote-ref-80)
81. Supra [↑](#footnote-ref-81)
82. Supra [↑](#footnote-ref-82)
83. Supra [↑](#footnote-ref-83)
84. Sheriffs and Civil Process Act. [↑](#footnote-ref-84)
85. Black’s Law Dictionary (supra), 777. [↑](#footnote-ref-85)
86. [2012] 18 NWLR (Pt. 1333) 555 at 593, paras. G-H. [↑](#footnote-ref-86)
87. [1989] 5 NWLR (Pt. 122) 471 at 490, para D. See also Mandara v. A-G., Federation [1984] N.S.C.C. Vol. 15, 221 at 233, lines 47-52. [↑](#footnote-ref-87)
88. [2008] 6 NWLR (Pt. 1083) 418 at 443, para C-D. [↑](#footnote-ref-88)
89. Fidelis Nwadialo (supra), 965. [↑](#footnote-ref-89)
90. [2004] 9 NWLR (Pt. 878) 345 at 380, paras. F-G. [↑](#footnote-ref-90)
91. [1962] 3 All E.R. 12 at 16, paras. D-I. [↑](#footnote-ref-91)
92. Sheriffs and Civil Process Act. [↑](#footnote-ref-92)
93. [2009] 16 NWLR (Pt. 1167) 356 at 389-390, paras H-A. [↑](#footnote-ref-93)
94. Who are parties to garnishee proceedings? [↑](#footnote-ref-94)
95. Sheriffs and Civil Process Act. [↑](#footnote-ref-95)
96. Order 6, rule 2 of the Lagos State Magistrates’ Courts. [↑](#footnote-ref-96)
97. (supra) at 221, para. H. [↑](#footnote-ref-97)
98. (supra) at 375, para. D. [↑](#footnote-ref-98)
99. (supra) at 376, para. A-B. [↑](#footnote-ref-99)
100. [2013] 6 NWLR (Pt. 1349) 197. [↑](#footnote-ref-100)
101. [2013] 2 NWLR (Pt. 1337) 80. [↑](#footnote-ref-101)