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# Enforcement of Judgments

Nigeria

Law & Practice  
and  
Trends & Developments

Olasupo Shasore SAN, Bello Salihu,  
Orji Uka and Teniola Akeju  
ALP NG & Co

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2020

# NIGERIA

## Law and Practice

*Contributed by:*

*Olasupo Shasore SAN, Bello Salihu, Orji Uka and Teniola Akeju*

*ALP NG & Co see p.12*



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## 1. Identifying Assets in the Jurisdiction

### 1.1 Options to Identify Another Party's Asset Position

The procedure for the enforcement of judgment in Nigeria (as outlined below) requires certain information that a successful claimant (judgment creditor) must provide to be entitled to the relevant writ of execution. The information may include the means of identifying the assets of the defendant (judgment debtor) for the purposes of judgment enforcement.

#### Public Asset Registries

##### *Corporate Affairs Commission*

The Corporate Affairs Commission maintains a register of all business entities, including information pertaining to business proprietors, company shareholders and directors, as well as mortgages, charges and liens over company assets.

##### *Lands Registries of the various states and the Federal Lands Registry*

Information relating to property ownership, assignment of interest in property, mortgages, charges and liens over property is publicly available at the Lands Registries. Each state of the federation has a Lands Registry, with Federal Lands Registries located in selected cities across the country.

##### *National Collateral Registry*

This is the registry in which security interests over movable assets are registered.

#### Freezing Orders

The High Courts of the various states in Nigeria and the Federal High Court are established by the Constitution of the Federal Republic of Nigeria 1999 ("the Constitution"), which confers on them the jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, duty, liability, interest, obligation, or claim is in issue. By reason of Section 6 of the Constitution, judicial powers of the Federal Republic of Nigeria are vested in the High Courts. They are superior courts of record, with all the powers of a superior court of record and all the inherent powers and sanctions of a court of law.

As an attribute of their powers above, the High Courts can, in certain circumstances and in deserving cases, grant freezing orders and asset disclosure orders or such other orders by which a party can lawfully identify another party's assets in Nigeria. The purpose of such orders is usually to prevent defendants from dissipating their assets or to have them removed from the jurisdiction of the court in the course of litigation. Freezing orders are generally available on grounds that include the existence of a legal right, the balance of convenience between both

parties, the existence of a triable substantial issue, the likelihood of irreparable damage, and the existence of an alternative remedy such as damages.

The courts may also grant garnishee orders attaching a debt due from a third party to the judgment debtor and the use of the amount of that debt in liquidating the judgment debt by ordering the third party to pay such to the judgment creditor. In granting garnishee orders, Nigerian courts typically direct the third party to disclose the amount standing to the credit of the judgment debtor in such third party's custody and control.

## 2. Domestic Judgments

### 2.1 Types of Domestic Judgments

#### Interim/Interlocutory Orders

These are orders obtained in the course of pending proceedings that are granted to last either until the hearing of a motion on notice (in the case of orders obtained without notice; ie, at an ex parte hearing) or until the conclusion of the suit. An order is granted upon an ex parte application where from the nature of the application the interest of the other party will not be affected or in matters of extreme urgency. The courts are empowered to make a number of interlocutory orders for the preservation of the subject matter of the suit or the maintenance of the status quo until the final determination of the case.

#### Default Judgment

This may be obtained by the claimant where the defendant fails to file a response (defence) to the originating process within the time prescribed in the applicable rules of court or where the defendant fails to appear on a date fixed for hearing. The defendant's failure to file a defence to the claim is deemed to be an admission of the facts contained in the statement of claim and the claimant is entitled to judgment where the claim discloses a cause of action. Default judgment is only applicable where the claimant's claim is for pecuniary damages or detention of goods with or without a claim for pecuniary damages. A default judgment is not a judgment on the merits and can be set aside by the court that grants it. The rules of court recognise different categories of default judgment, including judgment in default of appearance, judgment in default of defence, and judgment in default of appearance at case management conference.

#### Consent Judgment

This is a judgment made with the agreement (consent) of both parties. Here, both parties reach an out-of-court settlement of the dispute between them and present the settlement agreement (the terms of settlement) to be made as the final, valid and binding judgment of the court on the parties.

## **Summary Judgment**

This is a judgment delivered by the court without a trial. This happens when the matter is non-contentious or when the defendant has no defence to the claim. Summary judgment is a final judgment on the merits, and, unlike a default judgment, it cannot be set aside by the court that granted it.

## **Final Judgment**

This is the final and binding decision of the court delivered at the end of the trial or, in appropriate cases, upon consideration of the affidavit evidence presented to the court. In the final judgment, the court settles all issues in controversy between the parties and issues final orders in accordance with the reliefs sought by the parties. The reliefs could be injunctive, declaratory, an order for specific performance, etc.

## **2.2 Enforcement of Domestic Judgments**

The options available for enforcement of domestic judgments are as follows.

### **Writ of Fieri Facias (“Writ of Fifa”) under Section 20 of the Sheriffs and Civil Process Act**

This is a writ executed against the judgment debtor’s movable or immovable property whether in the judgment debtor’s possession or otherwise. The writ empowers the court sheriff, following an application by the judgment creditor, to seize the property of the judgment creditor and to sell such property wherever it may be found within the jurisdiction of the court.

### **Garnishee Proceedings under Section 83 of the Sheriffs and Civil Process Act**

Here, the judgment creditor attaches debts that a third party (eg, the judgment debtor’s bank) owes to the judgment debtor. The third party, upon an order of court (a garnishee order absolute), pays the sum owed to the judgment debtor to the judgment creditor in satisfaction of the judgment debt. Not every debt owed is attachable – for the debt to be attachable, the sum must be certain in amount and the judgment debtor must have an immediate legal right to it.

### **Writ of Possession under Section 24 of the Sheriffs and Civil Process Act**

This is to enforce a judgment or order for the recovery of land or the delivery of possession of land. The writ directs the sheriff of court to enter upon the land and deliver possession completely to the judgment creditor in an action.

### **Writ of Sequestration under Section 82 of the Sheriffs and Civil Process Act**

This is issued in respect of a property of a judgment debtor who disobeys a judgment of the court or who cannot otherwise be found.

### **Writ of Delivery under Section 51 of the Sheriffs and Civil Process Act**

This is used where the judgment debtor’s property sold to realise the judgment debt is in the possession of the judgment debtor or anyone claiming through him. The writ of delivery is issued to deliver possession of the property to the purchaser and to remove any person on the property.

### **Judgment Debtor Summons under Section 55 of the Sheriffs and Civil Process Act**

Where a judgment debtor defaults in paying any judgment debt, the judgment creditor may apply to court for the issuance of judgment debtor summons, requiring the judgment debtor to appear and be examined on oath as to his means. This can result in an order of committal of the judgment debtor for defaulting in making the payment. The court must be satisfied, upon an examination, of the judgment debtor’s ability to pay the debt and that the default is not due to the judgment debtor’s poverty.

### **Insolvency/Bankruptcy Proceedings**

The Bankruptcy Act defines an act of bankruptcy (amongst other things) as the failure of a judgment debtor to satisfy the requirements of a bankruptcy notice by complying with the terms of a judgment. Section 408(d) of the Companies and Allied Matters Act also permits the institution of winding-up proceedings against a company for its inability to pay its debts, including debts arising from execution or another process issued on a judgment and that remains unsatisfied in whole or in part.

## **2.3 Costs and Time Taken to Enforce Domestic Judgments**

The costs and length of time involved in executing a judgment in Nigeria depend on the circumstances of each case. Generally, there is no specific time for the enforcement of judgment. Judgments and orders of court are ordinarily supposed to be complied with willingly and promptly. It is only in cases where judgment debtors refuse to willingly comply with the terms of the judgment that enforcement proceedings are commenced by the judgment creditor. Courts are also empowered to stipulate a time within which a judgment is to be complied with.

The amount of time and the costs involved in enforcing a judgment depend on a number of factors, such as the nature of the judgment (monetary or otherwise), the availability or otherwise of the assets of the judgment debtor, the time stipulated in the judgment for the enforcement of the judgment, post-judgment steps taken by the judgment debtor (including an application for stay of execution of the judgment), and an appeal against the judgment.

The most commonly adopted procedure for the enforcement of a money judgment in Nigeria is garnishee proceedings. A Writ of *Fifa* is the preferred and most efficient option where the judgment creditor has identified or is certain of the judgment debtor's assets within the jurisdiction of the court. For judgments against companies incorporated in Nigeria, the institution of winding-up proceedings may be the best option.

## 2.4 Post-judgment Procedures for Determining Defendants' Assets

There are no specific post-judgment procedures for determining what assets the defendant holds and/or where they are located. However, the judgment debtor's assets may be discovered upon searches conducted as explained in 2.1 **Types of Domestic Judgments**.

The post-judgment step taken for determining the assets of a judgment debtor for the purpose of enforcing a judgment typically depends on the enforcement procedure adopted by the judgment creditor.

As stated above, in bringing garnishee proceedings, the first step required on the part of the judgment creditor is to identify the person(s) (typically a bank or other financial institution) who is/are indebted to the judgment debtor or who has custody of the judgment debtor's monies. Order 37 Rule 2(c) & (d) of the Federal High Court (Civil Procedure) Rules 2019 require a judgment creditor to file an affidavit in support of the application for a garnishee order, which affidavit shall state, amongst other things, that there is a person who is indebted to the judgment debtor, that such person is within jurisdiction, and, in the case of deposit-taking institutions, the name and address of the branch of such institution where the judgment debtor's account is believed to be held and the particulars of such account. The rules are, however, silent on how the judgment creditor is to access the above information.

Similarly, under the Writ of *Fifa* procedure, execution is, in the first instance, levied against goods and chattels (ie, movable property) of the judgment debtor and may only be directed to immovable properties where such goods and chattels are not sufficient for the payment of the debt. Section 44 of the Sheriffs and Civil Process Act provides that if sufficient movable property of the judgment debtor can be found in the state to satisfy the judgment and costs of execution, execution shall not issue against the judgment debtor's immovable property, but if no movable property of the judgment debtor can be found with reasonable diligence, or if such property is insufficient to satisfy the judgment and costs of execution, and the judgment debtor is the owner of any immovable property, the judgment creditor may apply to the court for a writ of execution against the immovable property of the judgment debtor, and execution

may issue from the court against the immovable property of the judgment debtor in accordance with the provisions of the Act.

For the above reason, Order IV Rule 16(2) of the Judgment (Enforcement) Rules provides that an application for a writ of attachment against immovable property shall be by motion supported by evidence showing, inter alia, that no movable property of the judgment debtor, or none sufficient to satisfy the judgment debt, can with reasonable diligence be found. Once again, both the Act and the Rules are silent on the procedure for determining the assets of the judgment debtor and their location.

## 2.5 Challenging Enforcement of Domestic Judgments

A defendant is entitled under Nigerian law to challenge enforcement on grounds of non-service of the originating process in the action that resulted in the judgment. Additionally, the grounds under which the courts have held that a defendant may challenge a judgment include:

- where the judgment was obtained by fraud or deceit either in the court or of one or more of the parties;
- where judgment was given without jurisdiction;
- where it is obvious that the court was misled into giving judgment under a mistaken belief that the parties consented to it;
- where the procedure adopted was such as to deprive the decision or judgment of the character of a legitimate adjudication;
- where the judgment debt has been satisfied.

A defendant may also challenge the enforcement of a judgment where the defendant has commenced an appeal against the judgment and has obtained an order staying execution of the judgment/order.

## 2.6 Unenforceable Domestic Judgments

The following types of domestic judgment cannot be enforced in Nigeria:

- purely declaratory judgments;
- judgments given without jurisdiction;
- judgments obtained by fraud; or
- judgments that are the subject of a valid and pending appeal and an order of a stay of execution.

## 2.7 Register of Domestic Judgments

There is currently no central register of domestic judgments. However, judgments of the courts form part of the public record and interested persons may simply apply to the relevant court for a copy of the judgment or ruling in any particular case.

In the case of domestic judgments given in one state to be enforced in another state in Nigeria, Sections 104–111 of the Sheriffs and Civil Process Act require a judgment creditor to apply to the registrar of the court that delivered the judgment, who shall issue him with a certificate of judgment.

The judgment creditor is required to take such certificate, duly signed and sealed by the registrar, to the state of execution and register the certificate with the registrar of a court of similar jurisdiction in that other state. The court registrar enforcing it shall then enter the particulars of the certificate of judgment in a book called *The Nigeria Register of Judgments*. From that date, the registering court shall recognise the judgment as if it were given by it and such judgment shall have the same force and effect in all respects as a judgment of that court, and the like proceedings may be taken upon the certificate as if the judgment had been a judgment of that court.

The Act is silent on the contents of the Nigeria Register of Judgments and does not contain any provision on how and when the name of a judgment debtor can be removed from the register. However, Nigerian courts are bound to apply the equitable rule against double compensation and will not permit a judgment creditor to enforce an already satisfied judgment.

### 3. Foreign Judgments

#### 3.1 Legal Issues Concerning Enforcement of Foreign Judgments

The applicable legal regime for the enforcement of foreign judgments in Nigeria includes:

- the Reciprocal Enforcement of Judgments Ordinance 1922 (also often referred to as “the Reciprocal Enforcement of Judgments Act, Laws of the Federation of Nigeria 1958”) (“the Ordinance”);
- the Foreign Judgments (Reciprocal Enforcement) Act 1960 (also often referred to as “the Foreign Judgments (Reciprocal Enforcement) Act Cap F35, Laws of the Federation of Nigeria 2004”) (“the Act”); and
- common law.

#### Enforcement under the Act and the Ordinance

There has been some controversy as to which of the statutes is in force, especially given the colonial heritage of the Ordinance. The controversy stems from the fact that Part 1 of the Act deals with registration and enforcement of foreign judgments of superior courts, while Section 3 of the Act empowers the Minister of Justice to extend, by order, the application of the said Part 1 to any foreign country, including the United Kingdom, if the Minister is satisfied that judgments of superior courts of

Nigeria will be accorded similar or substantial reciprocity in such foreign countries. It is important to state that the applicable regime for the enforcement of foreign judgments relates only to money judgments.

Under the Act, once an order is made under Section 3 in respect of any part of Her Majesty’s dominions to which the Ordinance earlier applied, the Ordinance ceases to apply as from the date of the order. The authors are not aware that the Minister has made such order. However, in the compilation of the Laws of the Federation of Nigeria, the Ordinance was omitted, suggesting that it has been impliedly repealed by the Act.

The Supreme Court has now settled the controversy surrounding the two statutes when it held in a number of cases – including *Macaulay v R.Z.B Osterreich Akiengesell Schaft of Austria* [2003] LPELR-1802(SC); *Grosvenor Casinos Ltd v Ghassan Halaoui* (2009) 10 NWLR (Pt 1149) 309; and *VAB Petroleum Inc v Momah* (2013) 14 NWLR (Pt 1374) – that the Act did not expressly repeal the Ordinance, and that both statutes remain existing laws; the Ordinance still applies to the United Kingdom and to parts of Her Majesty’s dominions to which it was extended by proclamation under Section 5 of the Ordinance before the coming into force of the Act.

#### Enforcement under the Ordinance

The Ordinance applies to judgment obtained in the High Court in England or Ireland or in the Court of Session in Scotland, or a superior court of record in other countries/territories that form part of the Commonwealth as follows: Sierra Leone, Ghana, Gambia, Newfoundland, New South Wales, Victoria, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Islands, St Lucia, St Vincent, and Trinidad and Tobago.

The process for registration pursuant to the Ordinance should be brought within 12 months of the date of the judgment or such longer period as may be allowed by the court.

All money judgments from the above-mentioned jurisdiction are registrable and unenforceable subject to restrictions on registration contained in the Ordinance as discussed in **3.3 Categories of Foreign Judgments Not Enforced**.

#### Enforcement under the Act

Under the Act, a judgment obtained in a foreign country may be registered and enforced in Nigeria where the Minister of Justice has made an order/proclamation extending the benefits of the Act to the registration and enforcement of foreign judgments to that country. However, the Minister has not made any such proclamation.

Ordinarily, a judgment registered under the Act may be registered within six years after the date of the last judgment given in the proceedings; however, because the Minister has not made a proclamation, the limitation period for registration is 12 months or such longer period as may be allowed by a superior court in Nigeria.

Under the Act, a foreign judgment obtained from a country in respect of which a proclamation has been made by the Minister can be registered and enforced in Nigeria if:

- it is a judgment of a superior court of the foreign court;
- it is final and conclusive between the parties; and
- the judgment orders the payment of a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty.

### **Enforcement at Common Law**

In addition to the procedure under the Ordinance and the Act, foreign judgments are also enforceable at common law. At common law, foreign judgment constitutes a debt that creates a fresh cause of action for the judgment creditor. The judgment creditor may therefore commence a fresh action in a Nigerian court claiming the reliefs granted to it by the foreign court. The fresh action is usually commenced by way of a Writ of Summons accompanied by an application for summary judgment.

### **3.2 Variations in Approach to Enforcement of Foreign Judgments**

The approach of the Ordinance, the Act and the common law to the enforcement of judgments varies depending on the type of judgment sought to be enforced. The differences in approach between the Ordinance and the Act are explained below.

#### **Judgments That Can Be enforced**

Under Section 3 of the Ordinance, a judgment of a foreign country shall only be recognised and enforced in Nigeria if:

- it is a judgment of a High Court in England or Ireland, or in the Court of Session in Scotland, or a superior court of record in that part of Her Majesty's domain where the Ordinance has, by proclamation under Section 5 of the Ordinance, been made applicable to (ie, the Commonwealth countries as listed in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**).

Under Section 3 of the Act, a judgment of a foreign country shall only be recognised and enforced in Nigeria if:

- it is a judgment of a superior court of record;
- it is a final and conclusive judgment as between the parties;

- the judgment was delivered by a court of competent jurisdiction; and
- the judgment is for a definite sum of money, but not for money recoverable as tax, a fine or another penalty.

#### **Limitation Period**

Under the Ordinance, the limitation period for registration is 12 months from the date of the judgment or the date of the determination of an appeal against the judgment, while under the Act, the limitation period is six years in respect of judgments from countries in respect of which a proclamation by the Minister has been made. However, as no order has been made by the Minister, the difference in limitation period is currently of no effect and applications for registration of judgments under the Act or the Ordinance must be brought within 12 months of the date of the judgment or such longer period as the court may allow.

#### **Final Judgments**

The Ordinance is silent on whether the judgment subject of enforcement must be final. However, the Ordinance provides that no judgment shall be registered if the judgment debtor satisfies the registering court either that an appeal is pending against the judgment, or that he is entitled and intends to appeal against the judgment. Under the Act, only a final and conclusive judgment is capable of enforcement; however, a judgment is deemed final and conclusive notwithstanding that an appeal may be pending against it or that it may still be the subject of an appeal.

#### **Approach at Common Law**

Unlike the registration procedure under the Act and the Ordinance, the enforcement regime at common law applies to the rest of the world. Additionally, a judgment debtor under this procedure has wider grounds to defend the action for the enforcement of the judgment.

### **3.3 Categories of Foreign Judgments Not Enforced**

#### **Under the Ordinance**

Under the Ordinance, a foreign judgment is not registrable and not enforceable if:

- the original court acted without jurisdiction; or
- the judgment debtor was not subject to the jurisdiction of the original court; that is, the judgment debtor did not reside nor carry on business within the jurisdiction of the original court and did not submit to the court's jurisdiction;
- or
- notwithstanding the judgment debtor's residence or business within the court's jurisdiction, the judgment debtor was

- not served with the court process and did not appear in the proceedings; or
- the judgment was obtained by fraud; or
- there is an appeal pending on the judgment or the judgment debtor satisfies the court that it intends to appeal against the judgment; or
- the judgment was in respect of a cause of action that for reasons of public policy could not have been entertained by the registering court.

### **Under the Act**

Section 4 of the Act provides that Nigerian courts will only enforce a foreign judgment if it is a judgment to which Part I of the Act applies; ie, a judgment of a superior court of a foreign country, which is final and conclusive, in respect of which there is a sum of money payable, not being a sum recoverable as tax, a fine or another penalty.

Consequently, the categories of foreign judgments that will not be enforced in Nigeria are:

- interim and interlocutory orders;
- judgments obtained from an inferior court in the foreign country; and
- judgments that are not in respect of a monetary sum or, where in respect of a monetary sum, the sum is payable in respect of taxes, or other charges of a like nature.

A foreign judgment will also not be registered and, consequently, be unenforceable if at the date of the application the judgment had been wholly satisfied, or the judgment could not have been enforced by execution in the country of the original court.

## **3.4 Process of Enforcing Foreign Judgments**

### **Common Law**

The process of enforcement of foreign judgment in Nigeria by an action at common law requires the institution of a fresh action (by way of summary proceedings) in a Nigerian court claiming the reliefs granted to the judgment creditor by the foreign court and exhibiting the judgment sought to be enforced as evidence.

The judgment creditor is required to file a Writ of Summons and apply for either a summary judgment or for the Writ of Summons to be placed on the undefended list on grounds that the judgment debtor has no defence to the action.

### **Under the Ordinance**

The procedure for registration and enforcement of foreign judgments under the Ordinance is contained in the Rules of Court for Reciprocal Enforcement of Judgments.

- An application under the Ordinance seeking leave to register a foreign judgment is to be made by a petition ex parte or on notice to a judge. The judge may direct a petition made ex parte to be made on notice. The petition is to be supported by an affidavit of facts exhibiting a certified copy of the judgment and stating that to the best of the information and belief of the deponent, the judgment creditor is entitled to enforce the judgment and the judgment does not fall within any of the restrictions contained in the Ordinance (see 3.3 **Categories of Foreign Judgments Not Enforced**).
- Upon hearing the petition, the court may, by an order, grant the judgment creditor leave to register the judgment. Where the order granting leave is made, the order must be served on the judgment debtor where the order is made upon a petition on notice. However, where the order is made upon a petition ex parte, no service of the order on the judgment debtor is required.
- Thereafter the judgment is to be registered along with the order granting leave to register it in the register of judgments kept in the High Court Registry.
- Notice of the registration is to be served on the judgment debtor within a reasonable time after such registration.
- The judgment debtor may, within the time limit specified in the order granting leave to register the judgment, apply by originating petition to a judge to set aside the registration or suspend the execution of the judgment. The judge may, if he is satisfied that the case comes within one of the restricted cases in respect of which may not be registered, or for any other reason, order that the registration be set aside or execution on the judgment be suspended either unconditionally or on such terms as he thinks fit.
- Upon registration, the judgment has the same force and effect as a judgment delivered by the registering court and the registering court has the same control and jurisdiction over the judgment as it has over its own judgment. A registered judgment cannot be executed until the expiry of the time limit specified in the order granting leave to register the judgment.

### **Under the Act**

The first step in executing a foreign judgment under the Act is the registration of the foreign judgment within the prescribed time limit or such time limit as may be granted by the court. Proceedings for the registration of a foreign judgment are to be commenced by way of a petition. The petition shall be supported by affidavit stating prescribed facts and matters to have the judgment registered.

Upon registration, the judgment is deemed to have the same force and effect as a judgment originally given in the registering court and entered on the date of registration. The effect of this is that enforcement proceedings may be taken on the registered



judgment as though the judgment was a domestic judgment and the applicable provisions of the enforcement laws will be applicable to the registered judgment.

Where a sum payable in the judgment is payable in a currency other than the currency of Nigeria (naira), the sum is to be converted to naira on the basis of the exchange rate prevailing at the date of the judgment of the original court.

### 3.5 Costs and Time Taken to Enforce Foreign Judgments

Similar to domestic judgments, the costs and time taken to enforce foreign judgments depend on the facts and circumstances of each case. The factors that determine the time and the costs involved in the enforcement of a foreign judgment include the nature of the judgment, the amount of money involved, the availability or otherwise of the assets of the judgment debtor, the time stipulated in the judgment for the enforcement of the judgment, the possibility of an appeal against the judgment or against the order enforcing the judgment that can have the effect of delaying the process, and the pendency of an application for stay of execution of the judgment.

### 3.6 Challenging Enforcement of Foreign Judgments

A party against whom a registered judgment may be enforced may file an application in court challenging the registration and seeking to prevent enforcement where:

- the foreign judgment did not emanate from a superior court of record;
- the judgment is for a sum recoverable as tax, a fine or another penalty;
- the judgment was registered in contravention of the provisions of the Act; eg, the provisions of the Act are inapplicable to the judgment, such as a non-monetary judgment;
- the foreign court that delivered the judgment acted without jurisdiction – in respect of immovable property, the foreign court is deemed to have had no jurisdiction if the subject matter of the proceedings was immovable property outside the country of the foreign court, or the action was commenced contrary to an agreement between the parties to settle the dispute otherwise than by proceedings in the courts in that country, such as where the parties had agreed on the forum for the settlement of disputes and the action is commenced in a different forum;
- the judgment debtor did not receive notice of the proceedings in the foreign court in sufficient time to enable him to defend the proceedings and did not appear;
- the judgment was obtained by fraud;
- the enforcement of the judgment would be contrary to public policy in Nigeria;

- the rights under the judgment are not vested in the person by whom the application for registration was made;
- the matter in dispute in the proceedings in the original court had previously, on the date of the judgment in the original court, been the subject of a final and conclusive judgment by a court having jurisdiction in the matter;
- the judgment has been wholly satisfied or if it could not be enforced by execution in the country of the original court; or
- the judgment creditor is out of time to bring the enforcement proceedings; ie, the proceedings were brought more than 12 months after the delivery of the judgment in the case of an application brought under the Ordinance and more than six years after the delivery of the judgment in the case of an application brought under the Act.

An order registering a judgment may also be subject of appeal to the Court of Appeal against the decision of the High Court.

## 4. Arbitral Awards

### 4.1 Legal Issues Concerning Enforcement of Arbitral Awards

#### Enforcement of Foreign Arbitral Awards

##### *Domestic statutes*

The primary pieces of legislation governing arbitration in Nigeria are the Arbitration and Conciliation Act 1988 (ACA) (also referred to as “the Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria 2004”) and the Arbitration Law of Lagos State 2009, which applies to arbitrations seated in Lagos State and to arbitrations where the parties have, by agreement, elected to be governed by the Law.

Under the ACA (Section 51), an arbitral award, irrespective of the country in which it is made, shall be recognised as binding upon an application in writing to the High Court of a state or the Federal Capital Territory or the Federal High Court and can be enforced by the court. Similarly, under the Arbitration Law of Lagos State, an arbitral award, irrespective of the jurisdiction or the territory in which it is made, and upon an application in writing to the High Court of Lagos State, can be enforced by the court.

##### *Federal High Court Civil Procedure Rules*

Under the Federal High Court Rules, 2019, where an award is made in an arbitration in a foreign territory to which the Foreign Judgment (Reciprocal Enforcement) Act extends (see **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**), it is enforceable in Nigeria in the same manner as a judgment given by a court in that country and the provisions

of the Act shall apply in relation to the award as it applies in relation to a judgment given in that country.

### *New York Convention*

Nigeria is also a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (“the New York Convention”) and the New York Convention has been domesticated under Section 54 of the ACA and adopted as the Second Schedule to the ACA. Foreign arbitral awards are enforceable in Nigeria pursuant to the New York Convention. Thus, foreign arbitral awards are enforceable in Nigeria pursuant to the ACA, the Arbitration Law and the New York Convention. The New York Convention is applicable only in respect of awards made in a contracting state that has reciprocal legislation recognising the enforcement of arbitral awards made in Nigeria in accordance with the provisions of the New York Convention. In addition, the New York Convention applies only to disputes arising out of a contractual relationship.

### *International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act 1967*

Nigeria has ratified the International Centre for Settlement of Investment Disputes (ICSID) Convention in 1965 and domesticated it through the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act 1967. Under the ICSID Act, an award made by ICSID may be filed at the Supreme Court and shall thereafter have effect and be enforceable as an award contained in a final judgment of the Supreme Court.

### **Enforcement of Domestic Arbitral Awards**

Domestic arbitral awards are enforceable under the ACA and the Arbitration Law of Lagos State. Domestic arbitral awards are binding and enforceable upon an application in writing to the court.

### **4.2 Variations in Approach to Enforcement of Arbitral Awards**

The approach to enforcement of arbitral awards differs by the procedure (discussed in **4.4 Process of Enforcing Arbitral Awards**) and the courts with jurisdiction to enforce an arbitral award. The Supreme Court is the only court with jurisdiction to recognise and enforce ICSID awards, and the High Court of Lagos State is the only court with jurisdiction to recognise and enforce arbitral awards pursuant to the Arbitration Law of Lagos State.

In addition, there is a difference in the category of awards that are recognisable. There is no limitation as to the category of awards that is capable of recognition and enforcement under the statutes, provided that such award arose from a dispute that was capable of settlement by arbitration. On the other hand, only

pecuniary obligations imposed by ICSID awards are capable of enforcement in Nigeria. Non-monetary obligations may only be enforced in Nigeria using the instrumentality of the New York Convention.

### **4.3 Categories of Arbitral Awards Not Enforced**

An arbitral award shall not be enforced where it suffers from any of the irregularities listed in **4.6 Challenging Enforcement of Arbitral Awards**.

### **4.4 Process of Enforcing Arbitral Awards Under the High Court of Lagos State (Civil Procedure) Rules, 2019**

This procedure applies to the enforcement of arbitral awards at the High Court of Lagos State.

- The application for enforcement is commenced by Originating Motion on Notice stating the grounds of the application and supported by an affidavit and a written address.
- The party applying must also provide (i) a duly authenticated original or a certified copy of the award and (ii) the original arbitration agreement or a duly certified copy of the arbitration agreement.
- As the application is on notice, the award debtor may oppose the application by filing a counter-affidavit and written address in opposition to the Originating Motion. The applicant may file a reply on points of law within seven days.
- Upon hearing the application, the court delivers a ruling either granting or refusing leave for the enforcement of the arbitral award.
- An arbitral award may be enforced in the same manner as a judgment of the High Court.

The above procedure also applies to enforcement proceedings under the Federal High Court (Civil Procedure) Rules, 2019. However, the application is commenced by a motion *ex parte*, although the court may order the application to be made on notice. In addition, the supporting affidavit must state the name, usual or last known place of abode or business of the applicant and the person against whom it is sought to enforce the award. The affidavit must also state either that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

### **4.5 Costs and Time Taken to Enforce Arbitral Awards**

Just like domestic and foreign judgments, the costs and time taken to enforce arbitral awards depend on the facts and circumstances of each case. The factors that determine the time and the costs involved in the enforcement of an arbitral award include the nature of the award, the amount of money involved, the possibility of bringing an application to resist the recog-

dition and enforcement of the award that can have the effect of delaying the process, whether the other party opposes the application for enforcement and whether there are any appeals arising from the enforcement proceedings.

#### **4.6 Challenging Enforcement of Arbitral Awards**

Under the ACA and the Arbitration Law of Lagos State, any of the parties to the arbitration agreement may request the court to refuse recognition or enforcement of the award. From a combined reading of the ACA, the Arbitration Law of Lagos State, the New York Convention and the Federal High Court Rules, the grounds upon which a court may refuse recognition or enforcement of an arbitral award (domestic or foreign) include the following.

- The subject matter of the dispute is not capable of settlement by arbitration under the laws of Nigeria. The test for determining whether a dispute can be settled by arbitration is whether the dispute can be compromised lawfully by way of accord and satisfaction. An indictment for an offence of a public nature cannot be the subject of an arbitration agreement, nor can disputes arising out of an illegal contract nor disputes arising under agreements void as being by way of gaming or wagering. Equally, disputes leading to a change of status, such as a divorce petition, cannot be referred, nor, it seems, can any agreement purporting to give an arbitrator the right to give a judgment in rem (see *Kano State Urban Development Board v Fanz Construction Co* [1990] 2 NSCC 399, 417-418).
- The recognition or enforcement of the award is against public policy of Nigeria.
- A party to the arbitration agreement was under some incapacity.
- The arbitration agreement is not valid under the law that the parties have indicated should be applied or the arbitration agreement is not valid under the law of the country where the award was made.
- The party seeking the refusal was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was not able to present his case.
- The award contains decisions on matters that are beyond the scope of the submission to arbitration.
- The composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties or where there was no agreement between the parties in this regard, the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the law of the country where the arbitration took place.
- The award does not conform to the statutorily prescribed form and content of an arbitral award (only the Arbitration of Law of Lagos State provides this).
- The award has not become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, the award was made.

Under Section 29 of the ACA, an application to set aside an arbitral award must be brought within three months after such award has been made and published to the parties. A similar provision is contained in the High Court of Lagos State (Civil Procedure) Rules, 2019.

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international clients. The firm's wealth of expertise is at the core of the service offering. The firm's practice includes litigation and dispute resolution, corporate commercial, energy, natural resources and infrastructure, regulatory and compliance, and business advisory.

## Authors



**Olasupo Shasore SAN** leads the commercial litigation and dispute resolution practice group. He is often referred to as a “seasoned arbitrator and strategic litigator”, with 30 years of experience acting for sovereign, sub-national and private international parties

in international commercial and investment arbitration/litigation and other advisory capacities, and significant deep experience in investor-state arbitration. He is the leading African counsel in ICSID experience and investment-related disputes.



**Bello Salihu** is a commercial dispute resolution practitioner with varied commercial litigation and significant international arbitration experience, including ICSID procedure. He also specialises in cross-border asset-tracing and recovery. His experience covers

diverse areas of commercial endeavours and he is well regarded for being disposed to hands-on legal solutions. He frequently provides legal advisory services to all categories of clients on diverse areas of Nigerian law.



**Orji Uka** is a member of ALP's commercial litigation and dispute resolution group. He advises clients (local and international) on diverse areas of Nigerian law. He regularly appears before trial and appellate courts as well as arbitral tribunals in complex/high-profile

commercial disputes arising from interests in the oil and gas industry, real estate and construction, aviation and company restructuring.



**Teniola Akeju** advises clients on issues relating to energy and natural resources, infrastructure, telecommunications, media and technology. She is also a member of ALP's litigation and dispute resolution group, representing clients in commercial disputes arising from those sectors. She

provides support to clients in corporate/shareholder litigation and taxation.

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## ALP NG & Co

15 Military Street  
Onikan  
Lagos  
Nigeria

Tel: +234 1 700 2570  
Email: [alp@alp.company](mailto:alp@alp.company)  
Web: [www.alp.company](http://www.alp.company)

**ALP** | **NG & CO**  
AFRICA LAW PRACTICE NG & COMPANY  
[WWW.ALP.COMPANY](http://WWW.ALP.COMPANY)

## Trends and Developments

*Contributed by:*

*Olasupo Shasore SAN, Bello Salihu, Orji Uka and Teniola Akeju  
ALP NG & Co see p.232*

### **Money Judgments in Nigerian Law**

The expectation of realising the fruit of a judgment is one of the most significant incentives for embarking on any litigation. Judgments come in different forms; monetary, declaratory or injunctive. This article focuses specifically on the enforcement of money judgments in Nigerian Law.

As a general rule, there is no specific time for compliance with a judgment. A person directed to pay money, or do any act by an order of the court is bound to obey it without demand and if no time is expressed in the order, they are bound to do so immediately. In essence, a judgment takes effect from the date it is pronounced and becomes immediately enforceable unless the court otherwise directs. However, a judge may in the judgment stipulate a time within which a judgment is to be complied with.

In most court cases, and regardless of the cause of action, there is usually a relief seeking the award of monetary damages as compensation to the claimant for the conduct of the defendant(s). Courts are also known to award costs (usually monetary) in favour of a successful claimant. There would however be no reason for the “enforcement” of a judgment where a judgment debtor voluntarily satisfies the judgment.

The legal framework designed to support the enforcement of judgments is predicated on the presupposition that a judgment creditor would require the help of the court (and the force of law) in giving effect to the judgment.

### **Legal Framework**

Enforcement of money judgment in Nigeria is regulated by the Sheriffs and Civil Process Act, 1945 (SCPA) and the Judgments Enforcement Rules, a subsidiary legislation to the SCPA. The SCPA sets out, amongst other things, the various methods by which successful litigants may enforce money judgments. These are by writ of fieri facias, garnishee proceedings, a charging order, a writ of sequestration or an order of committal on judgment debtor summons.

Of the procedure available, the most commonly used are Writ of Fieri Facias (“fifa”) and garnishee proceedings. Garnishee proceedings is the most commonly used method.

### **Writ of Fifa**

The writ is issued on the application of a judgment creditor where the judgment debtor has refused to pay the money ordered to be paid in a judgment. Writ of fifa is issued to ensure that the judgment debt is realised by the seizure and subsequent sale of the judgment debtor’s properties (movable and immovable) and the proceeds of such a sale is used to satisfy the judgment debt. The primary targets are the judgment debtor’s chattels (movable property).

It is only where the movable property of the judgment debtor cannot be found or the amount realised from the sale of movable properties does not satisfy the judgment debt that immovable properties are proceeded against. It must also be mentioned that “seizure” under this procedure need not be actual or physical seizure. An entry by the appropriate court official (bailiff) into the premises where the goods are located coupled with an intimation that the goods are to be seized pursuant to the writ of fifa is sufficient.

The writ is issued by the registrar upon the application of the judgment creditor. Three days from the day of judgment must expire before the judgement creditor can apply for it. Movable properties are then first attached to be sold after five days of the seizure. Unless the judgment debtor requests in writing, immovable properties cannot be sold until after the expiration of 15 days from the day the property(ies) was attached.

### **Garnishee Proceedings**

Where a judgment debtor fails/refuses to pay its judgment debt, and it is discovered that the judgment debtor has money standing to its credit in the hands of a third party, the law views the money in the hands of that third party as a debt owing to the judgment debtor. The third party (garnishee) could be a bank or any other entity that has the custody of monies due/belonging to the judgment debtor. In other words, garnishee proceedings involve the interim attachment, at the instance of a judgment creditor, of money due from a third party to a judgment debtor and the use of the debt to satisfy the judgment debt.

Ultimately, in the absence of credible reason from such third party as to why the money due to the judgment debtor in its custody should not be paid to the judgment creditor, and on the orders of the court, the debt owed by the third party to the judgment debtor is paid by the third party to the judgment creditor

in satisfaction of the judgment debt. Garnishee proceedings are provided for under Section 83 of the SCPA. For this procedure to be applicable, judgment debtor must carry on business in the territorial jurisdiction of the court. The process is in two stages: order nisi and order absolute.

### *Order nisi or temporary order*

The process is initiated by an application at an ex parte hearing where an interim order (order nisi or temporary order) is sought.

The application seeks an order to attach monies standing to the credit of the judgment debtor in the hands of the garnishee(s) named in the application. The application may also seek additional order(s) which may include an order directing the appropriate officer/representative of the garnishee(s) to depose to an affidavit stating the balance(s) of the amount due to the judgment debtor as at the date the order nisi was made.

The order nisi is to be served on the garnishee(s) and the judgment debtor and the proceedings is then adjourned to a period of not less than 14 days from the date the order nisi is made. The order nisi requires the garnishee(s) to show cause why the order nisi should not be made absolute.

### *Order absolute*

Where the garnishee is unable to show cause, the court on the adjourned date would make the order nisi absolute. The effect of an order absolute is that the garnishee must then surrender to the judgment creditor whatever money in its custody that it is holding on behalf of or due to the judgment debtor.

### *Is the judgment debtor a necessary party in garnishee proceedings?*

One of the most topical issues with respect to the enforcement of money judgment by way of garnishee proceedings has been whether a judgment debtor is a necessary party to garnishee proceedings. There are opposing views on this subject. Section 83 (2) of the SCPA expressly provides that a copy of the order nisi (first part of the proceedings) must be served on the judgment debtor and this provision remains the strongest point for the proponents of the view that a judgment debtor must be a party to garnishee proceedings.

For the antagonists, making the judgment debtor a party to garnishee proceedings amounts to offering the judgment debtor a second chance to “defend” the case that resulted in the judgment and the garnishee proceedings.

*PPMC Ltd v Delphi Petroleum (2005) 8 NWLR (Pt 9820) 458*

The requirement to serve a copy of the garnishee order nisi on the judgment debtor (Section 83 (2)) appears to have been the

source of the controversy. The Court of Appeal in *PPMC Ltd v Delphi Petroleum (2005) 8 NWLR (Pt 9820) 458* held that although garnishee proceedings are incidental to the judgment pronouncing the debt owing, the judgment debtor is not a necessary party to the proceedings.

In the opinion of the court, it is a separate and distinct proceedings between the judgment creditor and the garnishee. See also *Zenith Bank v Igbokwe (2013) (LPELR – 21975 (CA))*. A similar view was held by the same court in *Denton-West v Muoma (2008) 6 NWLR (Pt 1083) 418*.

*U.B.A v Ekanem (2010) 6 NWLR (Pt. 1190)*

In *U.B.A v Ekanem (2010) 6 NWLR (Pt 1190)*, the court in emphasizing the insignificance of judgment debtor to garnishee proceedings described a judgment debtor as a “nominal party” who cannot react even if the law was not properly followed- it can only be seen and not heard and any action taken by it (judgment debtor) is considered in the eyes of the law as interloping, meddling or an obstruction.

*Fidelity Bank Plc v Okwuowulu (2013) 6 NWLR (Pt 1349) 197*

Interestingly however, the same Court of Appeal in *Fidelity Bank Plc v Okwuowulu (2013) 6 NWLR (Pt 1349) 197* held that having been required to serve a copy of the order nisi on the judgment debtor before the commencement of the second part of the garnishee proceedings, the proceedings thereafter becomes tripartite in nature thereby suggesting that both the judgment creditor and the garnishee as well as the judgment debtor are parties to the proceedings. See also *CBN v Auto Import Export (2013) 2 NWLR (Pt 1337) P 80* and *N.A.O.C Ltd v Ogini (2011) 2 NWLR (Pt 1230) 131* both decisions of the Court of Appeal.

*Nigerian Breweries Plc v Worhi Dumuje & Another [(2015) LPELR-25583(CA)]*

However, the recent case of *Nigerian Breweries Plc v Worhi Dumuje & Another [(2015) LPELR-25583(CA)]* appears to have settled this controversy. In that case, the Court of Appeal after considering some of its previous decisions on the subject came to the conclusion that a judgment debtor is a necessary party (that must be heard) in garnishee proceedings. In the opinion of the court:

“The consequence of such service on the judgment debtor in my view avails the judgment debtor the right to be heard as to whether the order nisi ought to be made absolute. This would be in consonance with the constitutional provision of fair hearing enshrined in Section 36(1).....I would with humility suggest that the position being held that the judgment debtor is a passive party, but who must of necessity be served, before an order absolute can be made, runs counter to our legal jurisprudence

which commands hearing the other side. It is my position that the judgment debtor in the circumstance is a necessary party who ought to be heard, and failing which a miscarriage of justice obviously would be occasioned”.

## **Enforcement of Judgment Against Government**

One major obstacle often faced by judgment creditors seeking to enforce judgments against governments and their agencies in Nigeria is the requirement under the SCPA to the effect that the consent of the Attorney General of the Federation or Attorney General of a State as the case may be, must be obtained before such judgments can be enforced by way of garnishee proceedings. Section 84 of the SCPA provides that, where money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in their official capacity or in custodia legis, an order nisi shall not be made unless consent to such attachment is first obtained from the appropriate officer in the case of money in the custody or control of a public officer.

“Appropriate officer” in the context of this provision is the Attorney General of the Federation or of the State as the case may be. The authors are not aware of reported cases where an Attorney General in garnishee proceedings involving the Federal or a State Government gave their consent.

### *Reflection in the courts and garnishee proceedings*

This requirement for consent has been upheld by the courts and garnishee orders made without compliance with Section 84 of the SCPA were set aside. That was the case in *Government of Akwa Ibom State v Powercom Nigeria Ltd* (2004) 16 NWLR (Pt 868) 202. In *Onjewu v K.S.M.C.I* (2003) 10 NWLR (Pt 827) 40, the Court of Appeal held that the provisions of Section 84(1) of the Sheriffs and Civil Process Act was not inconsistent with the provisions of the 1999 Constitution.

In the recent case of *CBN v Interstella Communications Ltd* (2017) All FWLR (Pt 930) 442, the court provided some clarification on the requirement for the consent of the Attorney General. In the opinion of the court, the consent is not required where the Attorney General of the Federation or of a State is a party to the proceedings resulting in the judgment debt or is otherwise part of the negotiations or transactions in the case even to the extent of making part payment of the debt involved. The rationale behind this decision is that the essence of seeking the Attorney General’s consent is to avoid any embarrassment to the government that may arise from making attachment orders against public funds without notice to the government.

Consequently, where the Attorney General, who is empowered to institute and defend proceedings in the name of the State or Federation as the case may be, is already party to, or otherwise part of the proceedings, no further consent is required since

they, and by extension the government, thereby has notice of the proceedings.

## **Enforcement of Foreign Judgments**

Enforcement of foreign judgments in Nigeria is regulated by the Reciprocal Enforcement of Judgements Act 1922 (“the Ordinance”) and the Foreign Judgement (Reciprocal Enforcement) Act 1961 (“the Act”). There had been some controversy as to which of the statutes is in force especially given the “colonial heritage” of the Ordinance. The controversy stems from Section 3 of the Act which empowers the Minister of Justice to extend the application of Part 1 of the Act which deals with registration and enforcement of foreign judgments of superior courts, to any foreign country, including the United Kingdom, if they (the Minister) are satisfied that judgments of superior courts of Nigeria will be accorded similar or substantial reciprocity in those foreign countries.

The Act also provides that once an order is made under Section 3 of the Act in respect of any part of Her Majesty’s dominions to which the Ordinance earlier applied, the Ordinance ceases to apply as from the date of the order.

The Supreme Court appears to have settled the controversy surrounding the two statutes when it held that both of them remain existing laws as the Act did not expressly repeal the Ordinance - the Ordinance still applies to the United Kingdom and to parts of Her Majesty’s dominions to which it was extended by proclamation under Section 5 of the Ordinance before the coming into force of the Act. See *Macaulay v R.Z.B Osterreich Akiengesell Schaft of Austria* [2003] LPELR-1802(SC); *Grosvenor Casinos Ltd v Ghassan Halaoui* (2009) 10 NWLR (Pt 1149) 309; and *VAB Petroleum Inc v Momah* (2013) 14 NWLR (Pt 1374).

### *Limitation period*

It is also important to mention that the limitation period within which a foreign judgment is to be registered under the Ordinance is 12 months, but six years under the Act even though the limitation period specified under the Act is subject to activation by the Minister. The Ordinance applies to judgements from the following jurisdictions: England, Ireland, Scotland, Ghana, Gambia, Sierra Leone, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Islands, Newfoundland, New South Wales, St. Lucia, St. Vincent and Trinidad and Tobago.

The Court of Appeal has also recently clarified the position on the proper mode of commencing an action to register a foreign judgment in Nigeria. In the two recent cases of *Bronwen Energy Trading Ltd v Crescent Africa (Ghana) Ltd* (2018) LPELR-43796 (CA) and *Heyden Petroleum Ltd v Planet Maritime Co* (2018) LPELR-45553 (CA), the court held that the proper mode of

bringing an application to recognise a foreign judgment in Nigeria is by way of way of Petition and not Motion on Notice. The Court of Appeal in outlining the reasoning behind the above decisions referred to Rules 1(1) and 12 the Reciprocal Enforcement of Judgment Rules made by the Chief Judge of the Federal High Court pursuant to Section 6 of the Reciprocal Enforcement of Judgment Ordinance which clearly stipulates that such applications should be brought by way of a Petition.

The Court however made it clear that in cases where an application for the registration of a foreign judgment has been commenced under a wrong originating process, the appropriate order to be made by the court before whom such application is brought is an order striking out the application and not a dismissal. This, in the opinion of the court is to enable the applicant to bring a fresh compliant application.

### *Enforcement at common law*

In addition to the procedure under the Ordinance and the Act, all foreign judgements are also enforceable at common law. This is where a fresh action is predicated on the foreign judgment. This is however subject to the following criteria:

- the foreign judgement is final and conclusive;
- it was delivered by a superior court of competent jurisdiction;
- it must have been for a definite sum of money but must not have been a tax, fine or penalty; and
- where the judgement is for a res, the res must be situated within the jurisdiction of the court that gave the judgement at the time of delivery of the judgement.

See: Stanley-Idum & Agaba, Civil Litigation in Nigeria.

### *Effect of registration*

The Ordinance provides that where a judgment is registered, it shall as from the date of registration be of the same force and effect as if it had been a judgment originally obtained from the registering court. Section 4(2) of the Act contains a similar provision. Consequently, where a foreign judgment has been registered in Nigeria, the judgment creditor may commence enforcement proceedings in the manner already described above.

### **Conclusion**

The victory of a judgment creditor remains incomplete until the actual fruits of the judgment have been reaped by payment of sums ordered. A Garnishee proceeding is one of the tools through which a judgment creditor may achieve this objective. Nigeria has in place the legal framework to support the process leading to the satisfaction of money judgments whether obtained from national or a foreign court, and in the case of a judgment from a national court, the legal framework makes provisions for different classes of judgment debtors; private or government (public) agencies.



# NIGERIA TRENDS AND DEVELOPMENTS

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Contributed by: *Olasupo Shasore SAN, Bello Salihu, Orji Uka and Teniola Akeju, ALP NG & Co*

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## ALP NG & Co

15 Military Street  
Onikan  
Lagos  
Nigeria

Tel: +234 1 700 2570  
Email: [alp@alp.company](mailto:alp@alp.company)  
Web: [www.alp.company](http://www.alp.company)

**ALP** | **NG & CO** ▶  
AFRICA LAW PRACTICE NG & COMPANY  
[WWW.ALP.COMPANY](http://WWW.ALP.COMPANY)