

**LEGAL REMEDIES AGAINST HUMAN RIGHTS VIOLATION IN NIGERIA\***

**Abstract**

*It is a trite that no criminal act or omission should go without punishment. Injury to one is injury to all. The violation of one person's human rights is thus an attack on every person's human rights. The importance of accountability of human rights violators at all times can therefore, not be overemphasized both as a defensive means of prevention of violation, and a compensatory mechanism for victims of human rights violations. Legal mechanisms and judicial remedies have been provided in Nigeria especially under the Fundamental Rights Enforcement Rules, 2009, for the enforcement of human rights, enforcement of such legal remedies have remained needlessly chancy, leaving victorious victims with the same status quo ante lite. Where persons are unable to concretize/access their human rights remedies by enforcement, the relevance of the whole legislative effort and judicial process is called to question and human rights is further brought to ridicule. This article highlights the legal remedies for human rights violations and provides a practical guide to enforcement of such remedies even against State parties and individuals*

**Keywords:** Legal Remedies, Human Rights, Violations, Appraisal, Nigeria

**1. Introduction**

Human rights have been universally recognized and vastly protected both by national and international legislations. States have obligations to protect and see to the protection of human rights of all persons within territories. In Nigeria, human rights have been recognized in succeeding Constitutions including the various international human rights conventions and treaties to which Nigeria is a signatory.<sup>1</sup> Unfortunately, the heavy weather being made about provision of human rights documents has not fully translated into enforcement of human rights provisions especially when such enforcement is against State bodies and agencies like the police. economic, social and cultural rights have entirely been underplayed while civil and political rights, (the main subject of this discourse) which have been proclaimed as fundamental human rights have been ridiculed especially by State agents through a culture of nonchalant regard for judicial authority. Against the background that enforcement is the live-wire of every litigation, this paper describes the legal remedies available to victims of human rights violations while providing a guide for compelling compliance with Judgement orders.

**2. Fundamental Rights Defined**

Human rights are generally concerned with attainment of dignified living conditions for every person in every place.<sup>2</sup> They have been defined as the basic rights and freedoms which are protected by the law and belong to every person in the world, from birth until death based on shared values like dignity, fairness, equality, respect and independence.<sup>3</sup> Nigeria is not left out in the promulgation of these ideas which have become part of the laws of different States. The Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended<sup>4</sup> in its Chapter 2 and Chapter 4 is dedicated to such rights which are recognized by the Nigerian Law as human rights. While the economic, social and cultural rights are recognized but have gained no actual force in Nigeria, their Chapter 4 counterparts, the civil and political rights which are dubbed 'fundamental rights' are stated in the Constitution to be enforceable and have over time become the subject matter of plethora of litigation in High Courts within this jurisdiction. Fundamental Rights in our jurisprudence are therefore the inalienable standards of living<sup>5</sup> to be protected by the State, provided in sections 33 to 46 of the Constitution of the Federal Republic of Nigeria (CFRN), 1999, as amended<sup>6</sup> to wit: right to life,<sup>7</sup> right to dignity of the human person,<sup>8</sup> right to personal liberty,<sup>9</sup> right to fair hearing,<sup>10</sup> right to private and family life, right to freedom of thoughts, conscience and religion,<sup>12</sup> right to freedom of expression

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<sup>1</sup> An example of which is the African Charter on Human and Peoples Rights (Application and Enforcement) Act, Cap 10 Laws of Federation 1990.

<sup>2</sup> N Opeyemi, 'Inalienable and Fundamental Human Rights: An Engagement with the Nigerian Side of the Story', (PDF) Inalienable and Fundamental Human Rights: An Engagement with the Nigerian Side of the Story (researchgate.net), accessed on 23/8/2021.

<sup>3</sup> Equality and Human Rights Commission, 'What are human rights?' Equality and Human Rights Commission (equalityhumanrights.com), accessed on 23/8/2021

<sup>4</sup> Hereinafter referred to as CFRN, 1999

<sup>5</sup> See *Ransome Kuti v. AG Federation* [1985] 8 NWLR (Pt. 6) 211.

<sup>6</sup> *Odogu v. A.G of The Federation* [1999] 6 NWLR (Pt. 456) pg. 508 (a) 552

and the press,<sup>13</sup>right to peaceful assembly and association,<sup>14</sup>right to freedom of movement,<sup>15</sup>right to freedom from discrimination,<sup>16</sup> and right to acquire immovable properties anywhere in Nigeria.<sup>17</sup> These are the rights to which this study shall be referring and providing directive guidelines to enforcement.

### 3. Applicant in Fundamental Rights Enforcement Proceeding

A person who alleges that any of the fundamental rights provided for in the Constitution and to which he is entitled, has been, is being or is likely to be infringed may, apply to the court in the State where the infringement occurs or is likely to occur for redress.<sup>18</sup> In keeping with the ever relevant ideas of ensuring maximum protection of the fundamental principles of human rights, *locus* in fundamental rights enforcement has been expanded to include: anyone acting in his own interest; anyone acting on behalf of another person; anyone acting as a member of, or in the interest of a group or class of persons; anyone acting in the public interest; and association acting in the interest of his members or other individuals or groups.<sup>19</sup>

### 4. Jurisdiction of Courts

Jurisdiction in any fundamental rights enforcement proceeding is embedded in the High Court which could be the High Court of a State, the Federal High Court or the High Court of the Federal Capital Territory, Abuja.<sup>20</sup> Order II of the Fundamental Rights Enforcement Procedure Rules provides thus:

*Any person who alleges that any of the Fundamental rights provided for in the Constitution or African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act and to which he is entitled, has been, is being or is likely to be infringed may, apply to the court in the State where the infringement occurs or is likely to occur for redress.*<sup>21</sup>

*In Jim Jaja v. COP Rivers State & Ors,*<sup>22</sup> the Supreme Court when called upon to determine the proper court with jurisdiction to entertain any suit for enforcement of fundamental rights, held thus: '...Section 46 of the Constitution of the Federal Republic of Nigeria confers on a High Court special jurisdiction to deal with cases of violation of fundamental right of any person within the borders of this country'.<sup>23</sup>

### 5. Judgments in Fundamental Rights Enforcement Proceedings

A judgment is the decision reached by a court of competent jurisdiction after due consideration of the issues in controversy. An Order is a coercive directive of a court compelling a person to actor refrain from acting in a particular fashion.<sup>28</sup> Where an applicant applies pursuant to the Constitution and the Fundamental Rights Enforcement Procedure Rules for the protection of fundamental rights, the respondents where they wish to, may defend same by filing counter affidavits and written addresses stating how there was no violation or how the said violation was permissible. The Applicant has the option of filing further affidavits and reply on point of law.<sup>29</sup> The Court upon considering the facts and issues raised on law, makes according declarations and orders. These Orders/judgments are usually based on the reliefs sought by the applicant, usually taking the following shape:

- a. A Declaration that the arrest/detention/torture/inhuman and degrading treatment meted out to the Applicant by the Respondents is unlawful, unconstitutional and an infringement of the Applicant's fundamental rights.
- b. An Order directing the respondents to release the applicant from detention forthwith.
- c. An Order directing the Respondents to render public apology to the applicant in two national daily newspapers for their infringement of his fundamental rights.
- d. Damages in the sum of One Hundred Million Naira against the Respondents in favour of the Applicant.

All judgments of courts must be obeyed as soon as they are delivered or as soon as the stipulated time for obedience is attained. While declaratory judgments as exemplified in paragraph 'a' above must be obeyed in the same manner as all other judgments, only judgments which are executory can be actually enforced by officers of the Court. Courts are enjoined to avoid making orders which are unenforceable. In *AG Federation*

<sup>18</sup> Order II, Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules

<sup>20</sup> Fundamental Rights Enforcement Procedure (FREP) Rules, 2009, s 2

<sup>21</sup> Fundamental Rights Enforcement Procedure

<sup>22</sup> (2012) LPELR-20621(SC)

<sup>23</sup> *Jim Jaja v. COP Rivers State & Ors at p.20625*

<sup>28</sup>B Diepiri, 'Execution and Enforcement of Judgments and Orders of Court: Role of Judicial Administrators', *National Judicial Institute*, 2016 p. 3; See also the *locus classicus* of *Okoya v. Santili* (1990)2 NWLR (pt.131) 172

<sup>29</sup> FREP Rules, Or II Rules 2-7

*v. ANPP & Ors*,<sup>30</sup> the Supreme Court clearly stated that courts of law can only make enforceable orders, and like nature, they do not act in vain.<sup>31</sup>

### **6. Statutes Regulating Enforcement of Judgments in Fundamental Rights Proceedings**

There are laws which generally regulate the enforcement of judgments and orders of courts. These rules also apply in the enforcement of judgment orders emanating from fundamental rights enforcement actions and are itemized as follows: Section 6 (6) (a) of the 1999 Constitution vests the Courts with judicial powers and powers to ensure compliance with its sanctions. Section 287 of the Constitution further provides thus:

- (1) The decisions of the Supreme Court shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Supreme Court.
- (2) The decisions of the Court of Appeal shall be enforced in any part of the Federation by all authorities and persons, and by courts with subordinate jurisdiction to that of the Court of Appeal.
- (3) The decisions of the Federal High Court, the National Industrial Court, a High Court and of all other courts established by this Constitution shall be enforced in any part of the Federation by all authorities and persons, and by other courts of law with subordinate jurisdiction to that of the Federal High Court, the National Industrial Court, a High Court and those other courts, respectively.

Other statutes regulating enforcement of judgments in Nigeria are the following: Sheriffs and Civil Process Act, 2014; Enforcement of Judgments and Service Process Rules; Judgment Enforcement Rules of Court; and Sheriffs and Civil Process Laws of the various States.

### **7. Practical Steps to Execution of Judgment**

When Judgment is given in a fundamental rights application, there are several steps which an Applicant/Judgment Creditor must take to realize the fruits of his action starting from obtaining the certified true copy of the judgment and enrolled order to actual execution of the order.<sup>32</sup> Since fundamental rights actions may lie against government bodies, agencies and individuals alike, we may consider the various methods for enforcement of judgments applicable to both individuals and government judgment debtors forthwith and subsequently consider the challenges to the enforcement of the judgments, specifically analysing the controversial issue of leave of the Attorney General for enforcement of judgments wherein funds in the custody of a public officer is a subject. The writers had listed above the various orders which a court may make in judgment following a fundamental rights action. We now consider how each of these orders may be enforced.

#### ***Declaratory Orders***

A declaratory order/judgment is one which simply defines the legal relationship between parties and their rights and liabilities towards each other. Though it is a binding judgment like all other judgments of Court, a declaratory judgment cannot be enforced. It may however be followed by other orders, obedience to which give life and force to the Declaration. A declaratory judgment does not by itself order any action by a party, or imply damages or an injunction, although it may be accompanied by one or more other orders granting executory remedies. A declaratory judgment may also be the subject of a suit which must contain reliefs which are executory in nature. Most times, it is not enough for the Court to simply make declaratory orders in its judgment.

#### ***Enforcing an Order directing the Respondents to release the Applicant***

A Court may where an applicant is found to be in detention/unlawful custody, make an order directing the applicant's release.<sup>2</sup> This order is to be obeyed immediately or as directed by the Court. By Order 6 Rule 1(1),<sup>3</sup> at the hearing of any application, motion, or summons under these Rules, the Court or judge concerned may make such orders, issue such writs, and give such directions as it or he may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the Fundamental Rights provided for in

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<sup>30</sup> [2003] LPELR-630(SC)

<sup>31</sup> See *Nigerian National Supply Company Ltd. v. Alhaji Hamajoda Sabana and Company Limited* [1988] 2 NWLR (Pt. 74) 23." Per NIKI TOBI, JSC (Pp 29 - 29 Paras C - D)

<sup>32</sup> I D Uzo, *Practical Steps in Enforcement of Judgment & Committal for Civil Contempt*, (2010), Law Digest Publishing Co, Ijeshatedo, p. 4-34.

<sup>2</sup> *Benson v. COP & Anor* [2013] LPELR-21212(CA)

<sup>3</sup> FREP Rules, 2009

the Constitution to which the complainant may be entitled. An order directing the release of an applicant from detention where disobeyed by the respondents in the custody of the applicant, may be enforced by a committal/contempt proceeding. A contempt proceeding is a quasi-criminal proceeding where a person who has disobeyed an order or judgment of Court, called a contemnor, is served personally with Forms 48 and subsequently (2 days later), Form 49 of the Judgment Enforcement Rules<sup>4</sup> to give him/her notice of the enrolled order of Court, avail him an opportunity to obey same and consequently invite him/her to show cause why he should not be committed to prison for his disobedience of the said order/contempt of Court.<sup>5</sup> The Respondent may file a counter affidavit in response to the Form 49, challenging or rebutting the allegations made in the supporting affidavit and a written address or raise a preliminary objection to the notice of disobedience to Court Order (Form 49).<sup>6</sup> The Court will upon adoption of these processes, give a ruling, and in the event of finding the respondents guilty of contempt, commit the offending officers of the custodial/ detaining agency to prison.<sup>7</sup> An order of this nature may also be enforced by a writ of sequestration.<sup>8</sup> Sequestration is a judicial writ commanding the sheriff or other officer to seize the goods of a person named in a writ. By Section 82 of the Sheriffs and Civil Process Act: 'In case the person against whom an order or warrant of arrest, commitment, or imprisonment issued is not and cannot be found, or is taken and detained in custody without obeying the judgment, the court may make an order that a writ of sequestration do issue against his property, and such writ shall be issued and executed in the prescribed manner'.

#### ***Enforcing an Order directing the Respondents to render public apology to the applicant***

Where the Court makes an order directing that the respondents issue public apology to the applicant (as all proven victim of fundamental rights infringement are entitled<sup>9</sup>), and the said respondents fail to so issue, a writ of sequestration may be issued or committal proceedings commenced against them.<sup>10</sup>

#### ***Enforcing an Order for Damages/Money Judgment***

Where a Court upon considering the evidence led for and against a fundamental rights application, finds that the respondents indeed violated the rights of the applicant, the Court orders compensation or damages against the respondents in favour of the applicant. A Judgment Creditor in a fundamental rights action may apply for a writ of execution after 3 days of the delivery of the judgment.<sup>11</sup> A judgment creditor is entitled to apply for the enforcement of a judgment against a judgment debtor where<sup>12</sup> the stipulated time for compliance has elapsed, the judgment requires the payment of money or directs its recovery, the judgment requires the transfer, delivery or recovery of possession of property, real or personal or requires a person to do or abstain from an act execution and where the execution of the judgment has not been stayed or become statute barred.<sup>13</sup> The Supreme Court in the case of *Tukur v. Governor of Gongola State*<sup>14</sup> itemized the methods of enforcing different kinds of judgment as follows:

- i. A judgment or order for the payment of money may be enforced by a writ of fieri facias, garnishee proceedings, a charging order, a writ of sequestration or an order for committal on judgment debtor summons.
- ii. A judgment for possession of land may be enforced by a writ of possession, a writ of sequestration or committal order.
- iii. A judgment for delivery of goods may be enforced by a writ of specific delivery or restitution of their value, a writ of sequestration or a writ of Committal.
- iv. A judgment ordering or restraining the doing of an act may be enforced by an order of committal or a writ of sequestration against the property of the disobedient person.

<sup>4</sup> Order IX Rule 13

<sup>5</sup> All forms may be found as attachments in the Judgment Enforcement Rules.

<sup>6</sup> I Uzo, *Enforcement of Judgments and Committal for Civil Contempt*, (2010), Law Digest Publishing Co, Ijeshatedo.

<sup>7</sup> *Ogboni & Ors v. Ojah & Ors* [1988] LPELR-20465(CA)

<sup>8</sup> *Incorporated Trustees of Nigerian Governors Forum & anor v. RIOKNIG LTD & Ors.*[2018] LPELR-44915(CA)

<sup>9</sup> CFRN, 1999, S 35(6); *Okeke & Anor. V. Iheazie & Ors* [2018] LPELR 45017(CA); *Arulogun V. COP Lagos & Ors* [2016] LPELR 40190 (CA); *Jim Jaja v. COP Rivers State* [2013] NWLR (PT.1350) 225 SC

<sup>10</sup> See discussion on Committal proceedings and Writ of sequestration above.

<sup>11</sup> Order IV Rule 1(2), Judgment Enforcement Rules

<sup>12</sup> A Babalola SAN; *Enforcement of Judgments*, AfeBabalola publisher, 2003 Ed. P. 6 & 7

<sup>13</sup> Order IV Rules 8 (1) and (2) of the Judgment Enforcement Rules provides that a Judgment shall be executed against the property of a judgment debtor within 6 (six) years and against the person of the judgment debtor within 2 (two) years from the date in which the Judgment was delivered, failing which the judgment creditor must file an exparte application for leave of Court to execute the Judgment outside the stipulated statutory period.

<sup>14</sup> [1988] 1 NWLR (PT. 68) 39

Where an Order is made for payment of damages or compensation, same may be enforced in any of the above the manner.

### ***Writ of fieri facias (fifa)***

This is the most common of all writs of execution and is usually referred to in a shortened form as the *writ of fifa*. The writ is issued by the Court's Registrar on the application of a judgment creditor made after 3 days of the expiration of the period ordered by Court for compliance (by filing with the registrar a praecipe in Form 3 in the First Schedule to the Act),<sup>15</sup> where the judgment debtor has failed to pay the judgment debt/damages/compensation. Upon issuance of the writ, the judgment debt is realised by the seizure and subsequent sale of the judgment debtor's properties (movable and subsequently, immovable) and the proceeds of such a sale is used to satisfy the judgment debt. This sale is conducted after 5 days after seizure of the movable property to liquidate the debt.<sup>16</sup> The bailiff executes the writ by seizing in any place within the judicial division or the magisterial district of the place of execution any goods or chattels of the judgment debtor except his wearing apparels and bedding or those of his family and the tools and implement of his trade to the value of ten naira.<sup>17</sup> Where the movable property of the judgment debtor cannot be found or the amount realised from the sale of moveable properties does not satisfy the judgment debt, the Sheriff/Bailiff proceeds to attach the debtor's immovable properties.<sup>18</sup> The forms of the writ are specified in the First Schedule to the Act.<sup>19</sup>

### ***Summary of the Process of Execution by Writ of Fifa***

Application in Form 3 by judgment creditor – Issuance of writ by registrar in Form 4,5 or 6 containing the date and time of the writ – Signing of writ by Judge – Writ is assigned to Bailiff in judicial division of the execution – Seizure of movable chattel by Bailiff – intermission of five to twenty eight days within which judgment debtor may liquidate the judgment sum along with cost of execution – sale of seized goods – Attachment of immovable property where proceeds of movable is insufficient or in absence of movable property – 5 to 28 days period of intermission within which judgment debtor may liquidate the judgment sum long with cost of execution – Sale of Immovable Property to satisfy judgment sum – Sale becomes absolute after 21 days.<sup>20</sup>

### ***Garnishee Proceedings***

A garnishee proceeding is a judgment enforcement proceeding where the Judgment Creditor applies to Court to attach money owned by the Judgment debtor in the custody of a third party(Garnishee) for the satisfaction of the judgment debt.<sup>21</sup> By this proceeding, the Court orders a third party in whose custody are funds belonging or accruing to the Judgment Debtor, to pay to the Judgment Creditor the amount that satisfies the judgment debt.<sup>22</sup>For the purposes of the proceedings the third person indebted to the judgment debtor is called the garnishee, and the judgment creditor is referred to as the Garnishor. The Judgment Debtor is not a party to a Garnishee proceeding and may at best be treated as a meddlesome interloper should he attempt to intervene during the proceeding.<sup>23</sup> The Garnishee proceeding calls on the Garnishee to pay to the Judgment Creditor funds belonging to the judgment Debtor in the Garnishee's custody or show why the funds in its possession would not be garnished to pay off the judgment debt. In *GTB v. Immoson Nigeria Ltd*,<sup>24</sup> the Supreme Court held thus:

The only duty of a garnishee in garnishee proceedings is to satisfy the Court why the funds in its possession belonging to the judgment debtor should not be garnished to pay the judgment debt. It is not the duty of a garnishee to play the role of advocate for the judgment debtor nor to protect the debtor's money in its possession. See: *Oceanic Bank Plc v. Michael Olusegun Oladepo & Anor.* (2012) LPELR - 19670 (C/A).

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<sup>15</sup> Sheriff and Civil Processes Act

<sup>16</sup>SCPA, s 29.

<sup>17</sup> SCPA, s 25.

<sup>18</sup> J Fabunmi & O Akai, Execution of Judgements and Means of Enforcement Available to a Court in Nigeria *Journal of African Law*, vol. 32, no. 2, 1988, pp. 164–181.

<sup>19</sup> Sheriff and Civil Processes Act

<sup>20</sup> SCPA, s 47; *Odebiyi v WEMA Bank PLC & Ors* [2014] LPELR-22993(CA)

<sup>21</sup> E Udim, *Principles of Garnishee Proceedings in Nigeria*, Princeton & Associates Publishing Co. Ltd, Lagos, 2015, p. 1.

<sup>22</sup> *Union Bank of Nigeria PLC v. Boney Marcus Industries LTD*[2005] 13 NWLR (Pt. 943) 654 at 666; *Choice Investments Ltd. V. Jeronnimon*[1981] QB 149 at 154 -155

<sup>23</sup> *Nigeria Maritime Administration and Safety Agency v. Stephen Odey* [2012] 52 WRN 108; *UBA v. Ekanem*[2009] 40 WRN p 150.

<sup>24</sup> [2017] LPELR-42368(SC)

The first Garnishee order made is an Order *nisi* which becomes absolute after a specific period, usually three months. The Garnishee becomes discharged of its liability to the Judgment Debtor while the judgment debtor in so far as the judgment debt is fully paid is discharged of his liability to the Judgment Creditor.<sup>25</sup> For any debt to be attachable, it must be 'due or accruing to the judgment debtor' The debt must be certain in amount and the judgment debtor must have an immediate legal right to it. Untaxed costs cannot be attached. Similarly, a claim under a policy of insurance being an unliquidated claim for money cannot be attached. Garnishee proceedings cannot be stayed by the Judgment Debtor,<sup>26</sup> restrained by injunction,<sup>27</sup> and need not be commenced in the Court which gave the judgment.<sup>28</sup> Where an appeal against a garnishee order is dismissed for any reason, it cannot be relisted.<sup>29</sup> This makes the garnishee proceeding most likable for enforcement of judgments against Government agencies in fundamental rights actions.

### **Judgment Summons**

By this mode, a judgment debtor who is capable of satisfying the judgment debt but fails to pay the debt may be committed to prison for his default. Such a consequence does not, however, arise where the default is through poverty. The Judgment creditor applies for the issuance of judgment summons<sup>30</sup> and the judgment debtor is summoned to court and examined orally on oath in court along with his witnesses, as to his means and if at the end of the exercise the court is satisfied of his ability to pay, it may make any of the orders provided for in that regard, one of which is committal of the judgment debtor to prison.<sup>31</sup> Further, where there is apprehension that a judgment debtor is likely to escape to avoid the examination above stated or to avoid the payment of the judgment debt, the judgment debtor could be arrested and even imprisoned during the pendency of the application.<sup>32</sup> The court may make the following orders upon considering the judgment debtor's means:<sup>33</sup> an order for the commitment of the judgment debtor to prison in accordance with the provisions of section 65 of the Act; (i) an order for the attachment and sale of the judgment debtor's property; (ii) an order for the payment of money by instalments or otherwise by the judgment debtor; and (iii) an order for the discharge of the judgment debtor from prison. In addition to these modes of enforcing money judgments, judgment for payment of money may be enforced by way of bankruptcy notice, and by way of a winding up order under the Companies and Allied Matters Act.

## **8. Challenges to Enforcement of Fundamental Rights Judgments**

### **Delay in Issuance of Certified True Copy of Judgments**

*Section 294 of the Constitution of the Federal Republic of Nigeria, 1999 provides that the Courts listed in the Constitution shall deliver their judgments in writing within 90 days of adoption of final addresses and the copies of the judgment to be availed the parties within 7 days of delivery of the judgment. Unfortunately, the above provisions especially with regard to handing over copies of the judgment to litigants are observed more in breach. In the first place, the Judges still write their judgments and rulings in long hand. This practice leads to a situation where after the delivery of the judgment, the Judge's Secretary begins to type same. The time to be taken to type the judgments depends on different vagaries including the length of the judgment, the ability of the Secretary to decipher the handwriting of the Judge, the Secretary's workload, etcetera. There is also the problem of availability of power supply and absence of record books. Consequently, it may take up to months before certified copies of judgments are obtained by litigants, thereby impeding a litigant who is desirous of reaping the fruits of judgments delivered in his favour. Since the writ of execution cannot be issued without the certified true copy of the judgment, the delays may frustrate the judgment creditor.*

### **Cost of Execution of Judgement and Poverty**

*Most times, an uninitiated litigant assumes that payment of professional and filing fees covers all there is to pay with respect to his case. Also, the Sheriff and Civil Processes Act provides that the cost of execution of judgment is to be deducted from the proceeds of the execution. In practice, the Judgment creditor bears the*

<sup>25</sup> SCPA, s 91.

<sup>26</sup> *United Bank for Africa Plc. V. Iboro Ekanem* [2010] 6 NWLR (Pt. 1190) 207 at 226 PAR. H

<sup>27</sup> *Nigerian Telecommunications Plc. V. I.C.I.C (Directory Publishers) Ltd.* [2009] 16 NWLR (Pt. 1167) 356

<sup>28</sup> Judgment Enforcement Rules, Order VIII(3) (1) (b)

<sup>29</sup> Court of Appeal Rules, 2011, Order 18 Rule 10

<sup>30</sup> SCPA, s 55.

<sup>31</sup> O Ogun, *An Analysis of Enforcement of Judgments and Court Orders in the Nigerian Legal System*, Last accessed on 19/4/21 at <https://topeadebayollp.wordpress.com/2011/06/09/an-enforcement-of-judgments-and-court-orders-in-the-nigerian-legal-system/>

<sup>32</sup> SCPA, s 58.

<sup>33</sup> SCPA, s 63

cost of execution until these proceeds may be obtained. In other words, the Judgment Creditor makes further official and non-official payments towards realizing the proceeds of judgment including execution fees, cost of filing of post-judgment motions as well as mobilization of court officials and the Police. 40 percent of the total population, or almost 83 million people, live below the country's poverty line of 137,430 naira (\$381.75) per year<sup>34</sup> and since most persons who are target for human rights violation and suffer same are poor, it becomes difficult for them when successful to execute same. This constitutes one of the impediments encountered by successful litigants.

### **Corruption of Judicial Officers**

Corruption, as they say, has eaten into every fabric of the Nigerian society. The Court system is not immune to this scourge. It is therefore not surprising to see situations where Court officials fleece or extort litigants who are trying to enforce judgments handed down by the Courts. These court officials demand several forms of gratification, tips or bribes. Nothing is done for 'free' including duties as simple as signing of writs. Some are even so emboldened to the extent of bargaining with the litigant on what will be their share if the judgment sum is realized. Some of the Assistant Chief Registrars connive with Bailiffs to charge outrageous mobilization fees for execution of judgment. Carrying out of public auction of attached properties is also under the purview of these blood thirsty court officials and they seize this opportunity to wring as much blood as possible from the now frustrated and battered not-so-successful litigant. The auction is neither public nor an auction properly so called as these auctioneers prepare before-hand, posers who make the most outrageous offers until the goods are sold for the least price possible.

### **Use of State Machinery to Enforce Judgment**

Since many fundamental rights enforcement proceedings have State agencies and State functionaries (especially police officers) as respondents, it becomes a little awkward to use Police officers to enforce such judgments as provided by the Sheriffs and Civil Processes Act.<sup>35</sup>

### **Limitation Period in Judgment Enforcement**

By Order IV, Rule 8 of the Judgment Enforcement rules, judgments of courts cannot be executed after six years without leave of Court. This provision serves to encourage diligence of the judgment creditor. However, the provision may also work injustice against the judgment creditor as there may be reasons (some of which have been treated above) the judgment creditor is unable to execute the judgment within the time specified by law.

### **Frivolous Appeals and motions**

The law is that any person who is dissatisfied with judgment of a court has a right of appeal. This right of appeal is exercisable with respect to a part or the whole of the judgment. It is noteworthy that appeal in itself does not act as stay of execution. Unfortunately, unsuccessful litigants sometimes misuse the position of the law with respect to right to appeal. Many times, appeals are filed solely for the purpose of frustrating the judgment creditor and unsuccessful unscrupulous litigants/ Appellants use the appeal proceeding to put at indefinite abeyance, the enforcement of the judgment, filing frivolous applications for amendments to their appeals and employing all sorts of delay tactics until the judgment creditor is frustrated into abandoning both the appeal and the execution of his judgment.

### **Requirement of consent for enforcement against government entities**

Where money liable to be attached by Garnishee Proceedings is in the custody or under the control of a public officer, the order Nisi shall not be made under Section 83 of the Sheriff and Civil Process Act,<sup>36</sup> unless consent to such attachment is first and foremost sought and obtained from the appropriate public officer, i.e. the Federal Attorney General or State Attorney-General, as the case may be. This constitutes an impediment to execution of judgment in fundamental rights cases.

### **The Question of Attorney General's Consent in Garnishee Execution against Government Agencies in Fundamental Right Cases**

The various modes of execution apply mainly to individual judgment debtors. Where the Government whether Federal or State is the judgment debtor, judgment can generally be executed against the government

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<sup>34</sup>S Varrella, *Nigeria Poverty Rate*, accessed at <https://www.statista.com/statistics/1121438/poverty-headcount-rate-in-nigeria-by-state/> on 19th April, 2021.

<sup>35</sup> S 15.

<sup>36</sup> *Supra*

by attaching funds in the legal custody of a public officer. Section 84(1) of the Sheriffs and Civil Processes Act provides:

Where money liable to be attached by garnishee proceedings is in the custody or under the control of a public officer in his official capacity or in *custodia legis*, the order nisi shall not be made under the provisions of the last preceding section 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 or of the court in the case of money in *custodia legis*, as the case may be.

To enforce such a judgment, a copy of the judgment is sent to the Attorney-General of the Federation, in the case of the Federal Government, or to the Attorney-General of the State in the case of a State Government. If the judgment is for payment of money, the Attorney-General concerned may, by warrant under his hand, direct that the amount awarded be paid and, in the case of any other judgment, takes such measures as may be necessary to cause the same to be carried into effect. Where he thinks fit, the Attorney-General may, instead, direct that an appeal be filed against the judgment. Thus, where money liable to be attached by Garnishee Proceedings is in the custody or under the control of a public officer, the order Nisi shall not be made under Section 83 of the Sheriff and Civil Process Act,<sup>37</sup> unless consent to such attachment is first and foremost sought and obtained from the appropriate public officer, i.e. the Federal Attorney General or State Attorney-General, as the case may be, who by *Jallo v. Military Governor, Kano State*<sup>38</sup> has a responsibility to ensure that the State or Federation is not indebted.<sup>39</sup> The understanding *simpliciter* that money judgments cannot be enforced against government agencies without the consent of the Attorney General has long been a clog in the wheel of enforcement of judgments against Government agencies especially the Police, in fundamental rights enforcement post judgment proceedings, but ought however not be so. Even till date, despite prevailing and superseding judgments, the matter has remained a subject of heated debate between Judgment Creditors who seek to reap the fruits of their labour by enforcement and Government-Judgment Debtors who should but only be considered meddlesome interlopers in Garnishee proceedings. In *Utavie & Ors v. Capital Development Authority & Ors*,<sup>40</sup> the Court of Appeal when pronouncing on whether monies deposited by a customer into a commercial bank is under the control of the bank, had this to say which is very instructive:

I stated that the monies so attached by the Order Nisi are in the custody and under the control of the said garnishee Banks. I categorically stated also that the Garnishee Banks are not public officers within the meaning of Section 84 of the Sheriffs and Civil Process Act. I then cited and quoted the holding of this Court in *Purification Techniques (Nig.) Ltd v. Attorney General, Lagos State*

Therefore, the law has become settled that monies in commercial banks are in custody or under the control of the bankers because once a depositor paid monies to the bank, the banker received such monies from the customer as a loan, which creates a contract between the banker and customer. The classic case that described the contractual relationship that exists between a banker and his customer is *Joachimson v. Swiss Bank Corp*<sup>41</sup> where the learned law lord held thus:

The banks undertake to receive money and to collect bills for its customer's account. The proceeds so received are not to be held in trust for the customer, but the banks borrows the proceeds and undertake to pay them... The position of the law is that such monies belongs to the bankers from the moment of payment into the bank whether the customer is a public officer or a private person<sup>47</sup>. I therefore resolve this issue in the negative and hold that monies deposited into commercial banks by depositors, whether Public Officer or Private person is in custody and under the control of the commercial bankers not the depositors.

In *UBA PLC v. Yahuza*,<sup>43</sup> the Court of Appeal decided thus in ruling on whether a bank will be liable for the customer's money in its custody:

<sup>37</sup> *Supra*

<sup>38</sup> *supra*

<sup>39</sup> *CBN v. AMAO [2010] 16 NWLR (Pt. 1219) 271; CBN v. HYDRO AIR PTY LTD [2014] 16 NWLR (pt. 1434) 482; CBN V. J.I. Nwanyanwu & Sons ENT. NIG.LTD [2014] LPELR-22745; Utomudo v Military Governor, Bendel State [2015] EJSC (Vol. 3) 1*

<sup>40</sup> [2019] LPELR-49095(CA)

<sup>41</sup> (2004) All FWLR (Pt. 211) 1479

<sup>42</sup>[2014] LPELR-23976(CA); *Wema Bank Plc v Osilaru* (2008) 10 NWLR (Pt 1094) 150.



It is trite law that customer's monies in the hands of the banker are not in the custody or under the control of the customer and such monies remain the property in the custody and control of the banker, and payable to the customer when a demand is made. Thus, if anything happens to the money thereafter e.g. theft of money or unauthorized withdrawals, it is the banker and not the customer that bears the loss –

Finally, in the locus classicus of *Purification Techniques (Nig) Ltd v. Attorney General of Lagos State*,<sup>44</sup> the Court of Appeal per Galadima JCA, held thus:

Given the nature of the relationship between banker and customer and of the contract that exists between them, the customer has neither the 'custody' nor the 'control' of monies standing in his credit in an account with the banker. What the customer possesses is a contractual right to demand payment of such monies. Monies in the hands of the garnishee banker are not 'in the custody or under control' of the judgment debtor customer. Such monies remain the property in the custody and control of the banker and payable to the judgment debtor until a demand is made...

In our opinion, there is absolutely no basis for treating government bank accounts any different from bank accounts of every other juristic personality or customers. The relationship of a banker to a customer is contractual. It is essentially that of a debtor to a creditor, in the case of credit balances. It follows therefore, that judgment obtained against government agencies can be enforced by garnishee proceedings with no need whatsoever for obtaining the consent of the Attorney General, provided that funds accruing to the said Agency have been traced to a Commercial Bank. If the funds are however in the actual custody of a public officer, then only will the requirement of consent be complied with.

#### **Summary of Steps to use in garnishee against government agencies**

Discover Accounts with Commercial Banks where credit accrues to Government-Judgment debtor – Apply *ex parte* in any Court for Order nisi against Commercial Bank (now Garnishee) – Garnishee appears and shows cause why funds accruing to the judgment debtor will not be attached in satisfaction of the judgment debt or raises any valid defence – Court grants Order Absolute (if it deems fit) and funds are so paid to the Judgment Creditor or into Court – Judgment debtor has satisfied liability to judgment creditor – Garnishee has satisfied its liability towards judgment debtor for the specific amount paid to judgment creditor.

#### **9. Conclusions and Recommendations**

Fundamental human rights are as stated, fundamental. It is not only important to provide for them in Constitutions and other enforcement and ratification documents or to allow them by one hand while surreptitiously withdrawing them by the other hand, using subtle methods like delicate provisos, difficulty in execution and other administrative gridlocks. It is important to ensure that all human rights are enjoyed in fullness by all persons and human rights violations are discouraged by maximum restraining, deterrent and punitive orders. The provisions of the African Charter with respect to enforcement of fundamental rights must be fully implemented and utilized in compliance with the African Charter on Human and Peoples Rights (Application and Enforcement) Act, Cap 10 Laws of Federation 1990. More legal practitioners and civil societies must take up public interest litigation to ensure that victims of rights violation are afforded redress and recompense at the most inexpensive cost possible. Judicial Officers must be afforded the use of Information Communication Technology (ICT) facilities to facilitate receipt of the judgment by litigants within seven days as contemplated by the Constitution. It is commendable that the Fundamental Rights Enforcement Procedure Rules generally facilitates the proceedings at the High Courts, however, it is equally important that further provisions are enacted to also facilitate appeals emanating from fundamental rights actions so that successful litigants may effectively enjoy the fruits of their action.

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<sup>44</sup> [2004] 9 NWLR (Pt.8790) 665