

## ***GARNISHEE PROCEEDINGS: PROCESS, SUCCESS, AND LEGAL CONSIDERATIONS***

For any litigant, the goal is not just to secure a favorable judgment but to enjoy the fruits of that judgment by enforcing it. However, obtaining a judgment is often only the first step. The enforcement of that judgment can present its own challenges, especially when the judgment debtor is unwilling to comply voluntarily.



Several legal mechanisms exist for enforcing judgments, and the appropriate method depends on factors such as the type of judgment (declaratory or executory), whether it involves monetary relief, and the debtor's assets. One particularly effective tool for enforcing monetary judgments is the garnishee proceeding.

Recently, we successfully navigated a garnishee proceeding on behalf of our client, securing their right to recover funds owed under a judgment notwithstanding the legal complexity and roadblock the Judgment debtor tried to whip up in order to frustrate the garnishee proceedings. This write-up outlines the garnishee process and how to address attempts by a judgment debtor to obstruct it.

### ***What is a Garnishee Proceeding?***

A garnishee proceeding is a legal action that allows a judgment creditor (the party owed money) to recover a judgment debt by attaching or "garnishing" the debtor's assets held by a third party (the garnishee), usually a bank or financial institution. Under *Order VIII, Judgment (Enforcement) Rules*, the court has the authority to order the garnishee to pay directly to the creditor any debt owed to the judgment debtor. This process is especially effective when the debtor refuses or is unable to make payment voluntarily.

Garnishee proceedings are recognized under *Section 83 of the Sheriffs and Civil Process Act*, which empowers the courts to make an order for the attachment of the debtor's funds in the possession of third parties. The courts have consistently upheld the legitimacy of garnishee orders as a means of ensuring compliance with judicial decisions. For instance, in *GTB v. Innoson Motors (2017) LPELR-42776(CA)*, the Court of Appeal affirmed the validity of garnishee proceedings as an effective way to enforce a judgment debt.

## *The Garnishee Process*

1. **Obtaining a judgment:** Whilst theoretically speaking, some authors might have advocated for or define garnishee proceeding to mean enforcement of undisputed debt, it is practically available for a judgement sum i.e. it is available following the order of the court recognizing the debt. In other words, before garnishee proceedings can commence, a judgment must have been issued in favor of the creditor. This judgment legally establishes the amount owed and the debtor's obligation to pay.
2. **Filing a Garnishee Application:** The judgment creditor then files a motion *ex-parte* for garnishee proceedings, typically directed at a bank where the debtor holds an account. This application requests the court to make an *order nisi* which means to direct the garnishee to show cause why order absolute should not be made against the fund holder (garnishee).
3. **Order Nisi (Conditional Order):** Upon hearing the application, the court may issue an Order Nisi, a provisional order instructing the garnishee to show cause why the funds should not be attached and paid to the judgment creditor. This order effectively freezes the debtor's assets held by the garnishee.
4. **Service of the Order Nisi:** The creditor must serve the Order Nisi on both the garnishee and the judgment debtor. This step is crucial to notify the debtor of the proceedings and provide an opportunity for them to respond.
5. **Hearing and Order Absolute:** If the garnishee does not oppose the Order Nisi or fails to show sufficient cause, the court will make the order absolute. This final order compels the garnishee to release the funds to the creditor, thus satisfying the debt. The effect of order absolute makes the debt enforceable against the garnishee instead of the judgment debtor.



## *Debtor's Tactics to Stall Garnishee Proceedings*

Judgment debtors may attempt to delay the proceedings by filing an application to set aside or vary the Order Nisi. Common reasons include allegations of wrongful attachment of funds, that the judgment debtor has filed an appeal or motion for stay of execution, or the calculation of the judgment sum is incorrect, or claims that the funds in question belong to a third party etc.

## *Legal Remedies Against Delay Tactics*

In *Nigerian Breweries Plc v. Dumuje (2015) LPELR-25583(CA)*, the court emphasized that garnishee proceedings are summary in nature, designed to swiftly enforce a judgment. Delay tactics by the debtor, such as frivolous applications, are discouraged by the courts. Therefore, the creditor can take several actions to counter stalling:



1. **Opposing the Application:** If the debtor files an application to stay the garnishee proceedings or set aside the Order Nisi, the creditor must file a solid opposition. The creditor should argue that the garnishee order was properly obtained and that the debtor's challenge is without merit. Courts are often reluctant to set aside properly issued garnishee orders unless clear evidence of irregularity is shown (*UBA v. BTL (2016) LPELR-40959(CA)*).
2. **Highlighting Non-compliance:** In cases where the debtor is attempting to stall the process without substantial grounds, the creditor can bring this to the court's attention, asserting that the debtor is acting in bad faith to delay execution.
3. **Exploring Alternative Enforcement Options:** While the garnishee proceedings are ongoing, the creditor may consider alternative enforcement methods, such as seizing other assets under *Section 44 of the Sheriffs and Civil Process Act*, or filing for bankruptcy against the debtor under *Section 1 of the Bankruptcy Act*.
4. **Applying for Urgent Hearing:** Where there is a risk of the debtor depleting the funds in question, the creditor can apply for an urgent hearing to ensure a swift resolution. Courts are empowered to expedite proceedings where it is necessary to preserve the status quo.
5. **Where there is conditional stay of execution, the Creditor can proceed with garnishee proceedings where there is non-compliance with the conditions stipulated for stay of execution, technically arguing that there is no effective stay due to non-compliance of the conditions. This point was our argument and it was successful before the trial court.**<sup>i</sup>

## Conclusion

Garnishee proceedings are a powerful enforcement tool for judgment creditors, especially when other means of debt recovery have failed. However, judgment debtors often attempt to frustrate this process through delay tactics. It is crucial for judgment creditors to respond promptly and strategically, ensuring that the proceedings move forward efficiently. The success achieved in this recent case highlights the importance of perseverance and a well-executed legal strategy in enforcing judgments.



By leveraging the garnishee process effectively, our client is now one step closer to realizing the financial benefit of the judgment in their favor.

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contact@deluxelegal.ng

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<sup>i</sup> Due to privacy of our client, we are unable to provide the full details by ourselves but hope that a reader in search of a case of such nature will be successful in legal research.