



Dispute Resolution
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A CRITIQUE OF THE PROCEDURE FOR ENFORCEMENT OF MONETARY JUDGMENT THROUGH GARNISHEE PROCEEDINGS AT THE NIGERIAN NATIONAL INDUSTRIAL COURT.¹

Introduction

The National Industrial Court (“NIC”) has been listed as one of the superior courts of record in Nigeria by the third amendment to the 1999 constitution. Hence it has full constitutional capacity at par with any High Court in Nigeria.² Garnishee proceedings is one of the ways (and a generally preferred one) monetary judgments can be enforced in Nigeria and our jurisprudence is rich with the interpretation of the provisions of the Sheriff and Civil Processes Act, (the overriding and generally applicable law), decided cases and even commentaries of legal scholars and authors.

However, unlike the procedure for garnishee proceedings adopted by the High Courts of the various states, and the Federal High Court, there are some differences in the way the National Industrial Court Civil Procedure Rules 2017 prescribes that garnishee applications should be handled at the NIC which is considered worthy of this commentary. These procedural differences recently impacted a successful litigant,³ who was seeking to reap the fruit of litigation via garnishee proceedings at the NIC, with very unpleasant consequences, hence this critique.

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² See sections 6 (5) (cc); 84 (4); 240; 243 (2 & (4) and 254 (A), (B), (C), (D), and of the Constitution of the Federal Republic of Nigeria, 1999 (as amended by Third Alteration 2010, Act No. 3).

³ The monetary judgement was delivered on Friday 22nd November 2019 by His Lordship Hon. Justice Elizabeth A Oji, Phd in Suit No: NICN/LA/464/2016 **Prof. Dr Mansi EI-Mansi v. Elizade University**, accessible at <https://judgement.nicnadr.gov.ng/details.php?id=3955>.

Procedural differences in the garnishee application proceedings at the NIC compared to that of the High Courts.

Relevant Facts: After obtaining a monetary judgment at the NIC, Lagos and at the expiration of the of 30 days grace period that the Honourable Judge gave the judgment debtor to pay the judgment sum and following the judgment debtor's failure to pay the judgment sum as ordered by the Court, an application for garnishee proceedings was filed, pursuant to the Sheriff and Civil Processes Act. Upon filing the application, counsel followed up with the registry of court with a view to obtaining a date for the hearing of the said application - ostensibly before the same judge that delivered the judgment. It was after mounting pressure with a view to obtaining a hearing date for the garnishee proceedings that the registrar called the attention of counsel to the fact that the case file had not been assigned to a judge. Upon that information, further enquiries were made whereupon the registrar took time to explain the garnishee application procedure at the NIC in detail.

Order 47 rule 19 of the NIC Civil Procedures Rules 2017 provides that "*any proceedings initiated as a Post Judgment proceeding or any application brought or filed as a post Judgment proceedings shall be given a new Suit Number*". By virtue of this provision, the first thing to note is that the NIC considers a garnishee application as a post-judgment application for which a new file must be created unlike the practice at the High Courts where the same case file in which the monetary judgment was delivered is utilised for the garnishee proceedings. Secondly, the garnishee application will be given a new motion number and a new file number comprising of the old case number but with additional designation of letter 'm' to indicate that it is a new process entirely and in compliance with order **47 rules 18, 19** and **20** of the rules of court. This is unlike the practice at the High Courts which continue the use of the same old case file and number. The third difference is that the new garnishee application file will have to go through re-assignment procedure where it may or may not be assigned to the same judge that heard and delivered the monetary judgment. This also is unlike the practice in the High Courts where the same judge that heard and delivered the judgment will usually hear and determine the garnishee application.

It should be noted though, that **Order 47 Rule 21 of the NIC Civil Procedures Rules 2017** provides that "*any application filed as post-judgment proceedings shall unless otherwise directed by the President of the Court be heard and determined by the Judge who heard the substantive suit*" but the effect of the preceding provisions of rules 18, 19, and 20 renders the benefit of the rule 21 ineffectual in practice as experienced in the case under reference.

Critique of the provisions of Order 47 Rules 18, 19, and 20 of the NIC Civil Procedure Rules 2017 with respect to garnishee application.

The practice of having the trial court return the case file to the Registry of the Court's Division and creating separate case file for garnishee application can extend the turn-around time of the garnishee proceedings itself as was experienced in the case referenced herein. The new post-judgment application file could not be created timely as the court ran out of branded file jackets with which to create the new case file. The registry too could not create a temporary file jacket for the application despite several pressures mounted on them. Considering how fast such an application should be heard, the bureaucracy of creating a fresh case file for an application that should be determined quickly could significantly reduce the effectiveness of deploying a garnishee proceedings to enforce a monetary judgment at NIC.

Secondly, the practice of giving a new motion number comprising of the old case number but with additional designation of letter 'm' to it is an unnecessary surplusage that tends to waste time. Though a post-judgment application, a garnishee application is still an application in the cause in which judgment has been delivered. For example, an application to correct clerical error in a judgment is not normally given a fresh file number (at least at the High Courts), so why does a garnishee application require that fresh case numbering.

The third critique concerns practice of possibly having a garnishee application file re-assigned to another judge. The new file stands the risk of not being reassigned on time along with suffering from other vagaries of the officials who have the responsibility to ensure quick reassignment of the case file. In the case under reference, the additional excuse from the registry, after mounting pressure on them, was that the registry was out of stock of the branded file jacket in which they place new matters before sending the new case file for assignment. Consequently, the new garnishee application file was not assigned to a judge for hearing until at least 3 months after the application was filed. This practice, which is understood to have been put in place to ensure that another judge is able to attend to the new motion case file on time in the event of retirement or transfer of the judge who delivered the judgment, and to avoid other administrative bottleneck that may arise after the judgment has been delivered, has not worked out well. In fact, the opposite of the intended results were the consequences that attended the experience narrated above.

Recommendations

Enforcement of judgment via garnishee proceedings is a veritable means through which a successful litigant in a monetary judgment can reap the fruits of a favourable decision, but when the proceedings takes so long to commence after filing the application, the very aim of the proceedings is defeated. It is important that the President of the NIC reviews this rules of practice at the next review of the rules of court. The present rules of court also make

provisions for enforcement of judgments through garnishee proceedings in Order 51. We recommend that the present practice of processing, assigning, and handling the case file in which a judgment or order has been delivered in line with Order 47 Rules 18, 19 and 20 of the Rules of court should be discontinued while the case file in which there is a garnishee application immediately, and by default, be brought to the attention of the judge that delivered the judgment or order as is the practice in the High Courts. It is only if such judge is otherwise unavailable that the hearing of the application should be assigned to another judge for speedy hearing and determination of the application. This way, the provisions of Orders 47 Rule 21 and 51 of the NIC Civil Procedures Rules 2017 will be effectively deployed to satisfactory effect in garnishee proceedings before the NIC in favour of successful monetary judgment litigants and creditors.

Since the present practice is based on the rules of court and the next round of review of the rules of court may take some years to be done, my Lord the President of the NIC is urged to issue a practice direction to effect the required changes in the meanwhile.

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