

## 16. Garnishee Proceedings in Nigeria And Malaysia: Insights And Options On Government Account

**Abdulrazaq O. Abdulkadir Ph.D.**

LL.B, LL.M, Ph.D. (IIUMalaysia)

Senior Lecturer, Department of Private & Property Law,  
Faculty of Law, University of Ilorin, Ilorin, Nigeria

**Dina Imam Supaat PhD**

Faculty of Shariah and Law,  
Universiti Sains Islam Malaysia

&

**O.S.Afolabi Ph.D.**

PhD, (ABU, Zaria), LL.M, LL.B (O.A.U, Ile-Ife, Nigeria), BL,  
Lecturer, Department of Private & Property Law,  
Faculty of Law, University of Ilorin, Nigeria

### Summary of the Chapter

*The focus of this paper is to ventilate the position of the law in Nigeria and Malaysia where the judgment debtor against whom judgment is obtained is a constituent of the federation of Nigeria and Malaysia (Federal, State or any of their agencies) whether the consent of the Attorney General of the Federation or State is a sine-qua non to the filling of Garnishee proceeding. This paper argues that it is no longer the requirement of the law in Nigeria for the Attorney General's consent to be sought and obtained before the execution is carried out. On the other hand, in the case of Malaysia, garnishee proceeding is not allowed against government account. This paper argued that there is need to revisit the law and make garnishee proceedings maintainable against government's account so that a plaintiff would not be left at the mercy of the executive to claim a judgment sum. This paper concludes that there should be an avenue to challenge or recover indebtedness against the government.*

**Keywords-** *Garnishee, Proceedings, Insights and Options*

## 1. Introduction

The word "Garnish" is an old French terminology indicating warning or preparing. It serves as notice of warning of indebtedness that must be paid to a creditor before he is entitled to recover property as heir of the indebtedness. On the other hand, garnishee proceeding is a statutory proceeding upon which a debtor's money, property or credit in possession or under the control of or owing by a third party and a creditor is allowed to apply for payment of a debtor to his creditor by proper statutory process against a debtor or garnishee.<sup>719</sup>

The word garnishee means a person or institution (such as a bank) that is indebted to or is bailee for another whose property has been subjected to garnishment.<sup>720</sup> Garnishment on the other hand is a judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee for the debtor to turn over to the creditor any of the debtor's property (such as wages or bank accounts) held by that third party.<sup>721</sup> It is a method of seizure but it is not a levy in the usual acceptance of that term. It is a proceeding by which a diligent creditor may legally obtain preference over other creditor and it is in the nature of a creditor's bill or a sequestration of the effects of a debtor in the hands of his debtor.<sup>722</sup> In the case of *STB Ltd. v. Contract Resources (Nig) Ltd*<sup>723</sup> (per Olagunju, JCA as then was) at page 123, defines a "garnishee as:

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

<sup>719</sup> Garner, B.A., *Black Law Dictionary*, 8th Edn, (Thomson West) at 702.

<sup>720</sup> Ibid. See also Shehu A.T, "The Law and Practice of Garnishee Proceedings in Nigeria: An Executive Shield", *Ilorin Bar Journal*, Vol. 2 No. 1, (2006) at 50-51.

<sup>721</sup> Ibid.

<sup>722</sup> See Order 49 of the High Court of Malaya, 1980. See also *Choice Investments Ltd v. Jeromnimon; Mid-Land Bank Ltd*. See also, Garner B.A. op.cit.

<sup>723</sup> (2001) 6 NWLR (Pt. 708) p. 115 at 123

Garnishee proceeding is a separate action instituted by the judgment creditor against a third party who is in possession of the judgment creditor's fund. The proceedings is filed against the third party presupposes that judgment has been obtained against the judgment debtor. The third party is under obligation not to release the fund belonging to the judgment debtor after the court has granted order Nisi.<sup>724</sup>

By this process, a court of competent jurisdiction is allowed to order a third party in whose possession the property or money of a judgment debtor is therefore permitted to be paid directly to the judgment creditor. The debt due or accruing from the indebtedness of the judgment debtor may be sufficient or not to satisfy the judgment debt and the costs of the garnishee proceedings.<sup>725</sup> Where the money or property in custody of a third is sufficient to liquidate the judgment sum, the judgment creditor is allowed to go further to another third party in possession of judgment debtor's property.

## 2. Nature Of Garnishee Proceedings

By its nature, garnishee proceeding is an inquisitorial proceeding which affords a judgment creditor to ventilate displeasure over a judgment debtor failure to fulfill or meet a monetary obligation of the judgment obtained against him. It is a method of seizure of money of a judgment debtor's in possession of a third party but it is not a levy in the customary acceptance of that term. It is proceeding by which a diligent creditor may legally obtain preference over other creditors; and it is in the nature of the creditor's bill, or a sequestration of the effects of a debtor in the hands of his debtor. It is such a proceeding whereby plaintiff seeks to reach the rights and effects of defendant by compelling the attendance to court a third party who is in possession of such effects. While a garnishee proceeding accomplishes the same purposes

<sup>724</sup> See *Kuchimanchi Nagamani v. Mantri Prasada Agnihotrudu and others* (2001) (1) ALT 385. For clearer explanation, see *Fargo Freight Ltd v. Commodities Exchange Corporation* (AIR 2004 SC 4109).

<sup>725</sup> See the case of *Citizens Int'l Bank v. SCOA (Nig.) Ltd.* (2006) 18 NWLR (pt. 1011) 332 at 346

with attachment or execution of judgment, it is by no means a levy on property, although it is a judicial proceeding by which a new judgment is to be obtained. Garnishee proceeding is not applicable in execution of judgment in land matter for example, it is chiefly applicable in monetary judgment.

Having underscored the fact that garnishee proceedings is a separate proceeding, it merits mentioning to state also that it is not every debt that is maintainable by way of garnishee proceedings. In the case of *Sniadatch v. Family Finance Corp. of Bay View*,<sup>726</sup> the Supreme Court of the United States of America struck down a Wisconsin statute that permitted a pretrial garnishment of wages without an allowing or given opportunity to the defence to be heard.

In Malaysia for example, wages or salary of an employee cannot be ordinarily attached, except or until the court has ascertained the amount of wages of such employee.<sup>727</sup> Perhaps the essence of this is to ensuring social security.<sup>728</sup> For the debt to be attachable, it must be due and accruing.<sup>729</sup> The court in the case of *Syrakikat Perumbaguman Setia Jaya v Peremba Construction Sdn. Bhd*<sup>730</sup> stated as follows;

“[49.1.10] All debt due or accruing due. It is a pre-condition that the debt must be due to the judgment debtor which debt is actionable at the time of the application for the Garnishee order: *Saw Swan Kee v Sim Lim Finance (M) Bhd* [1985] 1 MLJ 221... As such, a loan secured by a legal charge is not a debt due to the lender/chargee until the loan has become payable recoverable by foreclosure action under ss. 253 and 254 of the National

<sup>726</sup> (1969) 395 U.S. 337 89 S.Ct

<sup>727</sup> See Employment Social Security Act 1969, Section 41.

<sup>728</sup> Ibid.

<sup>729</sup> See Section 85 ‘Sheriff and Civil Process Act’s CAP S.6 Laws of the Federation of Nigeria, 2004 which provides that service of an order that a debt is due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the court may direct. See also F. Nwadialo, *Civil Procedure in Nigeria*, 2<sup>nd</sup> edn. (University of Lagos Press, Lagos) p. 1011. See also Order 45 Rule 1(1), ‘Kwara State (Civil Procedure) Rules, 2005’. For example, the judgment creditor must have gotten a judgment of the court of competent jurisdiction awarding him certain amount and which the judgment debtor has failed to pay.

<sup>730</sup> High Court of Sabah and Sarawak at Sibuan, Application for Execution No. 36-6-2010.

Code. On the facts of the case, it was held that the financial arrangement between the garnishee and the judgment debtor is a continuing loan on a running account basis and until there is finalized account between them in respect of 36-6-20104 their relationship as chargee and chargor and also their relationship as a financier and housing developer respectively, no legal debt has come into existence which is owing and payable at the time when the decree nisi was obtained. In circumstances, there was no debt due and payable to the Garnishee at the relevant date, capable of being set-off against the debt attached to the garnishee."

Therefore, from the above exegesis, for a proceeding in the nature of garnishee to be maintainable in court, debt must have been due and payable at the relevant date. Apart from this, a court of competent jurisdiction must have awarded the sum due against the judgment debtor who has money in custody of a third party known as garnishee. It needs be emphasized that payment of the judgment sum by the garnishee to the judgment creditor in compliance with the order of the court constitutes a valid discharge of the garnishee indebtedness to the judgment debtor.

### **3. Garnishee Against A Constituent Of Government In Nigeria**

This concerns with the position of the law where the judgment debtor against whom judgment is obtained is a constituent of the federation of Nigeria i.e Federal Government, State Government or any of its agencies – whether the consent of the Attorney General of the Federation or State (as the case may be) is a sine-qua non to the filing of garnishee proceedings.<sup>731</sup> It was not in doubt that the provision of the 1979 Constitution made it a conditional precedent that Attorney General must assent to the garnishee proceedings against government or any of its agencies before same is filed in court. But with the amendment of the 1979 Constitution, the position had changed as the

<sup>731</sup> Abdulkadir O.A, "Extricating the Consent of Attorney General in Garnishee Proceedings in Nigeria", *the Legal Issues*, (Unilorin Press, Ilorin, 2013), 258.

subsequent constitution deleted the provision in the Nigerian judicial polity.<sup>732</sup>

However, some Attorneys General in Nigeria are still hiding under the amended legislation to prevent a judgment creditor from reaping the fruit of the outcome of a valid judgment of the court under the guise of non-existent consent. Therefore, there is need to ventilate the attitude of Attorneys General representing the government or its agencies on need to respect the new trend of the law.<sup>733</sup>

### ***Mechanism of Obtaining the Attorney General Consent before Execution of Judgment***

Since garnishee proceedings is a means of collecting a monetary judgment against a department by ordering a third party (the garnishee) to pay money, otherwise owed to the defendant, directly to the Plaintiff,<sup>734</sup> the requirement of seeking the approval or consent of the Attorney General of the Federation or State (as the case may be) is no longer the Law.<sup>735</sup> Garnishee proceedings are separate proceedings between the judgment creditor and a third party in custody of debt owed to the judgment debtor.<sup>736</sup> Accordingly, the provision of the Sheriff and Civil process Act<sup>737</sup> which granted Immunity to the holder of Government money is inapplicable to garnishee proceedings.<sup>738</sup> Therefore, money with Government bankers cannot be said to be money in control of a public officer to warrant the application of Sheriff and Civil Process Act crying for the consent of the Attorney General before monies in custody and control of a public officer can be attached

<sup>732</sup> See Section 251 (4) of the 1979 Constitution of the Federal Republic of Nigeria. See also section 287 of the Constitution of the Federal Republic of Nigeria, 1999 merely provides for enforcement of decision of courts throughout the Federation.

<sup>733</sup> Abdulkadir O.A, at 258

<sup>734</sup> See *UBN PLC v. Boney Marcus Industries Ltd & Ors* (2005) ALL FWLR (Pt278) p.1037 at 1046

<sup>735</sup> See the case of *Onjekwu v. Kogi State Ministry of Commerce and Industry & Ors* (2003) FWLR (pt.181) 1590.

<sup>736</sup> See the case of *Denton – West v. Muoma* (2008) 6 NWLR (PT 1083) 418 AT 442.

<sup>737</sup> Section 84 Sheriff and Civil Process Act, Cap.S6, Laws of the Federation of Nigeria 2004.

<sup>738</sup> Abdulkadir O.A, at 259.

in satisfaction of a judgment to prevent attachment by garnishee Order Nisi of money in custodia Legis.<sup>739</sup>

In *Purification Techniques Nigeria Ltd v.A.G, Lagos State&Ors*,<sup>740</sup> the Court held as follows:

“I must say with due respect to the learned Counsel for the Respondents that he has made a simplistic approach to the issue at stake by submitting that monies held in bank accounts I the name of Lagos State Government are in the custody or under the control of a public Officer or are otherwise in custodia legis. There is absolutely no basis for treating government bank accounts any differently from bank accounts of every other juristic personality or customers. The relationship of banker to customer is contractual. It is essentially that of a debtor to creditors, in the case of credit balances.”

Flowing from the above decision of the court, it is crystal clear that the permission of the Attorney General is not a pre-requisite be sought and obtained to garnishee a government account as it represents the archaic principle of law in Nigeria.

The mechanism of applying and obtaining Attorney General's consent before the execution of a judgment obtained against the state is a policy designed to prevent embarrassment to the government. However, any policy which will leave the judgment creditor at the mercy of the Attorney- General in whose name actions against governments are brought would amount to a judgment creditor seeking permission from his adversary to allow him reap the first of his judgment.<sup>741</sup> No wonder the legislatures in their wisdom removed the law from the Nigeria constitution. The above was captioned in the case of *Onjekwu v. K.S.M.C.L*<sup>742</sup> where the court said:

<sup>739</sup> Ibid at 259. See also Section 84 'Sheriff and Civil Process Act', Cap.S6, Laws of the Federation of Nigeria 2004.

<sup>740</sup> (2004) 9 NWLR (pt. 879)665 at 678-679 or (2004) ALL FWLR (pt211) 1479 at 1495

<sup>741</sup> See *Jallo v. Military Governor of Kano State* (1991) 5 NWLR (pt.194) 754; *Ojo v. Williams* 11 NLR 106 *Governor of Lagos State v. Ojukwu* (1986) 1 NWLR (pt 18) 621.

<sup>742</sup> *Jallo v. Millitary Governor of Kano State* (1991) 5 NWLR (pt.194) 754; *Ojo v. Williams* 11 NLR 106 *Governor of Lagos State v. Ojukwu* (1986) 1 NWLR (pt. 18) 621

"The position of the Law has now changed as the 1999 Constitution has brought a fundamental change in the body of the laws of Nigeria. Thus, archaic principle of law that "the King can do no wrong" and the servants cannot enforce the judgments against the king in his own Court appeared to be vacated by the said constitution. The present position is that it is the duty of the Attorney-General of the Federation or States to ensure that the Federal or State Governments pay their lawful debts. The Attorney General can no longer fold his arms for the judgment creditor to write him soliciting for his consent before he can enforce the judgment given in his favour."

From the decision of the court in *Onjekwu's* case, it is crystal clear that the consent of Attorney General before execution against government's account is no longer the position of the law. This position was captured by the court in the case of *Ekiti State Government v. Chief Titus O. Ashaolu, SAN*.<sup>743</sup>

#### 4. The Practice Of Garnishee Proceedings Against Government In Malaysia

In Malaysia garnishee proceeding is provided for under the Order 49 of the Rules of the High Court, 1980. Where a judgment creditor has obtained judgment and wish to execute such judgment by way of garnishee, the practice as in order jurisdiction is to file an affidavit in support of the application for garnishee stating all the relevant facts.<sup>744</sup> Contrarily, where the judgment so obtained by the judgment creditor is against the government of Malaysia, execution of the judgment by way of garnishee proceedings is not allowed. Indeed, it is immaterial whether the government in question is a local, state or federal government of Malaysia. This position was aptly brought to the fore in the case of *Than Cheng Tong v Tan KeeBoey*.<sup>745</sup>

It goes without saying from the above that since execution of the judgment by way of garnishee is not possible against government's

<sup>743</sup> (2012) ALL FWLR (Pt. 622).  
<sup>744</sup> See Form 90, Order 33 Rule 2.  
<sup>745</sup> (1982) S.L.R.N 80

account in Malaysia, the need for Attorney General's Consent did not even arise. It means therefore that judgment obtained against the government still remain at the mercy of the government for compliance or execution. This is why amendment of the law becomes essential in this regard. The implications of this is that, the government may with impunity fails to honour a contractual relationship enter into with a party and such a party would be helpless even if such failure to a contractual obligation is challenged in the court of law, a judgment cannot execute.

## 5. Relationship Between Banker And Government Account

It is a misconception of the law that government account with her banker is a "special" form of account. The relationship is not more than ordinary or individual account. By the customer banker relationship, money of a customer is in contract, money in the hands of a bank is borrowed from the customer, as such until it has been demanded for by the customer, it remains in the custody and control of the bank for use.<sup>746</sup>

Therefore, where a claimant got a freezing order (Order Nisi) against a Defendant bank's account with another, upon acknowledgment of receipt of the order, the bank holding such funds for its customer (upon a correct application of the modern negligence) owes the Claimant a duty of care. In the same token, monies held in bank accounts in the name of Government in the custody or under the control of a public officer or otherwise in "custodia legis"<sup>747</sup> are same. There is no basis for treating government accounts any differently from bank accounts of every other juristic personality or customers.<sup>748</sup> It appears and very un-ambiguous that the bank undertakes to receive money and the proceeds so received are not to be held in trust for the customers but

<sup>746</sup> Abdulkadir O.A, at 261

<sup>747</sup> -It means in the custody of the Law. The phrase is traditionally used in reference to property taken into court's charge during pending litigation over it. See the Bryan A. Garner (ed.), the Black Law Dictionary at page 783.

<sup>748</sup> - See *Purification Techniques Ltd vs. A.G. Lagos State*.

the bank borrows the proceeds and undertakes to repay them<sup>749</sup> upon demand. For this reason, account operates by government or any of its agencies are same with individual-the banker customer relationship exists between banker and government or its agencies.

In the case of *Trendex Trading Co-operation Ltd v. CBN*,<sup>750</sup> letters of credit were opened on behalf of the Ministry of Defence by the CBN through its correspondent bank in London. The extent of credit was that it was valid, for payment against documents that conform to contract of purchase from an English company. Upon notification by a new governmental regime in Nigeria, importation of cement was suspended. Payments were however suspended by the correspondent bank on the instruction of the CBN. A writ was issued for demurrage and damages was set aside by the High Court on the application of the Defendant, CBN that as department of government, it is immune from such writs based on sovereign immunity. Upon the view by the court of Appeal that there is restricted immunity, monies standing to the credit of the CBN even though it belongs to the Federation of Nigeria could be seized.<sup>751</sup>

## 6. Procedure For Garnishee Proceedings

The mode or method by which a judgment creditor could channel his grievances after obtaining judgment against his debtor in monetary claim is specifically stated under the various Rules of court.<sup>752</sup> One of such ways<sup>753</sup> is garnishee proceedings but this is achievable where the claim is monetary only.

<sup>749</sup> - See *JoaChimson v. Swiss Bank Corporation* (1921) 3 Km 110 at 121; *Yesufu v. A.C.B* (1981) 12 NSCC 36 and *Balogun v. N.B.N* (1978) 12 NSCC 36.

<sup>750</sup> (1977) /AER 849. This case was also reported in (2004) ALL FWLR (pt. 238), p.776 at 830

<sup>751</sup> Oshisanya L.O, *An Almanac of Contemporary judicial Restatements*, (Spectrum Books Limited, Lagos, 2010), 677.

<sup>752</sup> See for example Order 45 Rules 1 and 2 of the Kwara State Civil Procedure Rules, 2005

<sup>753</sup> There are other methods by which a judgment creditor can execute e.g. Writ of execution, this includes writ of FieriFacias, writ of possession, writ of delivery, writ of sequestration etc. See generally Order 44 Rule 1 of the 'Kwara State Civil Procedure Rule, 2005'

It is the requirement of the law that the judgment creditor shall file an application by way of motion *ex parte* supporting same with affidavit stating that a monetary judgment has been obtained against the judgment debtor who has failed to observe the content of the judgement by paying the judgment sum and that the judgment debtor is having fund or money due to him in the hands of the third party. The judgment creditor reserves the right to file this application before the same court who adjudicated on the substantive suit or file it before another court.<sup>754</sup> But where the judgment creditor exercise his right under the latter, he is under obligation to annexe the judgment of the trial court that awarded him the amount as exhibit to the affidavit in support of the application.<sup>755</sup> It is also important for the judgment creditor to mention in the affidavit in support, the account number intended to be garnished and what Bank.

Bearing the above in mind, the court after considering the merit in the application before it grants the motion *ex parte* by way of ORDER NISI<sup>756</sup> and upon the grant of the Order, the third party (garnishee) must not release the fund or money to the judgment debtor.<sup>757</sup> The enrolment of Order Nisi shall be served on the garnishee to show cause<sup>758</sup> why the Order Nisi should not be made absolute.<sup>759</sup> The garnishee usually

<sup>754</sup> The judgment creditor can also file this application before a Federal High Court notwithstanding the fact that the substantive matter was decided at the State High Court. See generally Sheriff and Civil Process Act, Laws of the Federation of Nigeria, 2004.

<sup>755</sup> The judgment of the court so annexed will give the new court the opportunity to peruse and form his opinion on the application brought before it.

<sup>756</sup> Order Nisi is a temporary ruling of court having a limited validity. See also Bryan A. Garner, 'The Black Law Dictionary' 8<sup>TH</sup> edn. (Thompson West) page 1072. See also Order 49 of the Rules of High court of Malaysia and Order 33 Rule 2 of the subordinate rules, 1980.

<sup>757</sup> Note that the third party (garnishee) is barred from releasing the fund in his custody upon the service of Order Nisi on her. See also section 85 Sheriff and Civil Process Act.

<sup>758</sup> Order 45 Rule 1(2), 'Kwara State Civil Procedure Rules, 2005'

<sup>759</sup> The debt must exist on the date the garnishee been served the attachment order. According to the court in the case of *Nadikaty Anjana v. Bandi Ramakrishna* (1971) 1 Audh W.R. 832, the time that material in considering whether the debt is attachable or not is the time the garnishment is operative and not the time of filing the application in court. The time where the garnishment is operative is when the Garnishee Order to Show Cause is served on the garnishee.

file application supported with affidavit urging the court to discharge the Order Nisi. Hence, where the garnishee is able to show cause, the Order Nisi may be discharged, but where he is unable to show a good cause, the Order Nisi shall be made ORDER ABSOLUTE.<sup>760</sup> The implication of this Order Absolute is that the fund or money in the hands of the third must be released by the third party (garnishee) to the judgment creditor. Where the third party (garnishee) refuses or neglects to release the fund or money to the judgment creditor as ordered by the court, execution shall be levied against the personal property of the third party (garnishee).<sup>761</sup>

### ***Distinctive Nature of Garnishee Proceedings***

Garnishee proceedings are distinguishable against the substantive proceeding which gives rise to the garnishee. It is trite and indeed a sine-qua non that there cannot be a garnishee proceedings without a judgment handed down in a valid proceeding.<sup>762</sup> However, it is not in every judgment that garnishee proceedings ordinarily follow. Garnishee proceedings follow or may be instituted where the judgment debtor fails to pay the judgment debt and the judgment creditor is aware of the fund of the judgment debtor in the custody of a third party.

Garnishee proceedings is a separate proceeding and the judgment creditor reserves the right to file garnishee proceedings in another contradistinction from that which delivered the judgment that gives rise to garnishee proceedings but the judgment creditor shall be required to

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<sup>760</sup> That is a conclusive decree of a court not liable to revision by the trial court except on appeal by the Appellate court. *UBA v. Ekanem* (2010) 6 NWLR (pt.1190) p. 207 at 227 at p. 224. In the case of *In Executive Engineer, KSE Board v. J H Sharma* (AIR 1988 Ker 288), the garnishee appeared in court in response to the letter and filed a counter-affidavit, raising certain objections. It was held that since he had raised his contentions in counter-affidavit, the same could be treated as objections contemplated under O 21 R 46 C even in the absence of formal notice under O 21 R 46 C to order that the disputed question be tried as an issue and to decide the issue. In the impugned orders, the court below did not consider the merits of the dispute raised by the appellant.

<sup>761</sup> Sheriff and Civil Process Act, Section 86.

<sup>762</sup> Ibid, Section 85.

annex the Certified True Copy of the judgment to the application.<sup>763</sup> In *NITEL Plc v. I.C.I.C (Director Publishers Ltd.)*<sup>764</sup> court was held that

“The existence of an application seeking on order at stay of execution of a judgment does not preclude a judgment creditor from seeking to use a garnishee proceeding, which is a separate proceedings entirely, to enforce the judgment.”

It is worrisome and from research conducted on this practice, where a garnishee proceeding is instituted against government, and the government's money in the hand of bank (third party) is frozen organized, the Attorney General or any of his officer who is representing the government often force their way to be part of the proceeding. This act of racialism is strange and does not represent the law. This is because, garnishee proceeding is entirely an affair between the judgment creditor (Garnish) and the third party (Garnishee). The court in the case of *NITEL PLC v. I.C.I.C (Directory Publishers) Limited*<sup>765</sup> stated thus:

“The judgment debtor is a total stranger to a garnishee proceeding, especially after a garnishee order absolute has been made. The judgment debtor cannot be heard on it...”

It needs be emphasized that a garnishee is required by law to make out a prima-facie case in the counter- affidavit in support before an issue as to his liability of the judgment debtor may be ordered to be raised. Where the garnishee disputes the indebtedness to the judgment debtor in a given proceeding, the court will still carry on with the proceedings. In the same token, where there is a little uncertainty about

<sup>763</sup> Nwadiado F., *Civil procedure in Nigeria*, 2<sup>nd</sup> edn. (University of Lagos Press, Lagos) at p. 1014.

<sup>764</sup> (2009) 16 NWLR (pt.1167) 356 at 389. See also Denton – West vsMuoma, Supra.

<sup>765</sup> Supra. See also the case of Denton – West vsMuoma, Supra at 443, where the court held that with regard to garnishee proceedings, it is the garnishee, that is, the person or bodies in custody of or holding the assets of the judgment debtor that could be aggrieved and competently appealed. See also *P.P M.C Ltd vs Delphi Pet. Incorporation* (2005) 8 NWLR (pt 928) 458 at 484.

the indebtedness of the judgment-debtor, the court will still continue with the proceedings. The Court in both circumstances must order an issue to be joined and tried accordingly. Notwithstanding the fact there is a reasonable doubt the matter should be tried.

The court is not in a position or has no power to issue an order to person or company who is not a party to a proceeding. For example, a usual financier of a judgment debtor who is not in custody or holding any money of the judgment debtor cannot be ordered to pay the judgment sum to liquidate or satisfy the indebtedness. The court may reject the application or refuse to issue Order Nisi or Order Absolute where suitable grounds are not found i.e. if the affidavit filed by the decree holder is vague, insufficient and ambiguous; the proceedings would not be sustained and would come at stake.

## 7. Conclusion and Recommendation

The paper has been able to discuss the concept of garnishee proceedings as a means of executing a judgment of court. It also reveals that the immunity granted to the holders of money is not absolute, it is subject to the consent of the Attorney General in Nigeria, and hence such money is not totally immuned from attachment. The judgment creditor can still attach such money if the consent of the Attorney General sought and obtained but with the coming in the force of the 1999 Constitution, it was unconstitutional to seek the consent of the Attorney General before attaching government property. It goes without saying that section 84(1) of the Sheriff and Civil process Act has become a lame duck. Section 84(1) of the SCA providing for the consent of the Attorney is inconsistent with section 6 (6) (b) of the 1999 Constitution of the Federal Republic of Nigeria and by virtue of section 1 (3) of the same constitution null and void to the extent of its inconsistency. Therefore, under the new dispensation, the government, its agencies (Ministry and extra-Ministerial department) and commoners are all equal. The age of inequality where the government/judgment creditor could not attach the property of Government/judgment creditor is gone. Finally, the decision of the court in *Government of Akwa-Ibom State v. Power COM (Nig) Ltd*<sup>766</sup> is no longer the law.

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<sup>766</sup> (2005) ALL FWLR (Pt. 246) 1353 (a) 1366 - 1370

### **Recommendation**

- With regard to the position in Malaysia, it is humbly posited that since execution of the judgment by way of garnishee is not possible against government account in the first place in Malaysia, the need for Attorney General's Consent did not even arise. It means therefore that judgment obtained against the government still remains at the mercy of the government for compliance or execution. This is why amendment of the law becomes essential in this regard to avert frustration of a successful judgment creditor.