

The Requirement of Consent of the Attorney General in the Enforcement of Judgement Under Garnishee Proceedings in Nigeria: An Appraisal

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Abstract: Under section 84 of the Sheriff and Civil Process Act, before a judgment creditor can garnishee money of a judgment debtor that is under the control or custody of a public officer, the consent of the Attorney General must be sought and obtained. The legality of this position of the law vis-vis the constitutional provisions that subject everybody to the judicial powers of the court has been a subject of controversy. Plethora of judicial authorities in this regard has not settled the controversy. This article examines the provisions of the Sheriff and Civil Process Act, judicial authorities in this regard in relation to the Constitutional provisions as to the judicial powers of the court; in order to determine the legality or otherwise of the requirement of consent of the Attorney General before garnishee proceedings can be initiated for the attachment of money under the control or custody of public officer. The article recommends that section 84 of the Sheriff and Civil Process be amended to remove the requirement of consent of the Attorney General before money under the custody or control of a public officer can be attached amongst others. This article used doctrinal method to collate materials.

Keywords: Attorney General, Public officer, Judgment Creditor/Debtor, Consent, Enforcement of judgment, Garnishee proceedings, Garnishee

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1. Introduction

Section 84 of the Sheriff and Civil Process Act¹ provided for the consent of the Attorney General as a pre-requisite before money under the custody or control of a public officer can be attached for the purpose of satisfying a judgment debt. It does imply that before a judgment creditor² can attach money belonging to a judgment debtor³ that is in the custody or control of a public officer for the purpose of enjoying the fruits of his judgment, the consent of the Attorney General must be obtained. This position of the law has been a subject of controversy among lawyers in the course of litigation and academicians in the academic circle. Some argued that, the requirement of the consent of the Attorney General under the Sheriff and Civil Process Act is contrary to the provisions of the Constitution of the Federal Republic of Nigeria 1999.⁴ It is also worthy to note that the judicial attitude of the courts in this regard has not addressed the controversy. It is against this background that this article attempts to appraise the requirement of the consent of the Attorney General in garnishee proceedings vis-à-vis the provisions of the 1999 Constitution as amended as it relates to the powers of the Court. To this end, the article is divided into six parts namely, part one is the introduction; part two deals with the enforcement of judgment; part three deals with garnishee proceedings; part four examines the requirement of consent of the Attorney General; part five considers the judicial attitude of the courts to the requirement of consent of the Attorney General; part seven contains the conclusion and recommendations.

2. Enforcement of Judgment

The enforcement of judgment embodies the steps being taken by a judgment creditor for the purpose of enjoying the fruits of his judgment. Enforcement of judgment is used interchangeably with the execution of judgment. The Supreme Court in *Govt. of Gongola State v. Tukur*⁵ defined execution of judgment as the “process whereby a

¹ Cap S 6 Laws of the Federation of Nigeria 2004, referred to simply as the Sheriff and Civil Process Act. It should be noted that most States of the Federation had enacted their Sheriff and Civil Process Laws, which are a reproduction of the Sheriff and Civil Process Act.

² A Judgment creditor is the party in whose favour judgment has been entered in a suit.

³ A judgment debtor is the party against whom judgment has been entered.

⁴ Referred to as the 1999 Constitution as amended.

⁵ (1989) 4 NWLR(Pt.117) 592 at 608 para E.

judgment or order of a court of law is enforced or given effect to according to law.” In *Re: Overseas Aviation Engineering (GB) Ltd*¹ Lord Denning, gave the meaning of execution in the following words:

Execution means quite simply, the process for enforcing or giving effect to judgment of the court and it is completed when the judgment creditor gets the money or other things awarded him by the judgment

It should be noted that the enforcement of judgment is wider in scope than the execution of judgment. The execution of judgment is limited to the enforcement of various writs provided under the law. Section 19 (1) of the Sheriff and Civil Process Act defined a writ of execution to include writ of attachment and sale, writ of delivery, a writ of possession and a writ of sequestration. On the other hand, “enforcement” is used to connote all available methods for enforcing judgment. For example initiating committal proceedings² against a person who disobeyed the order of court can be described as the enforcement of judgment and not execution of judgment.

3. Garnishee Proceedings

On the meaning of garnishee proceedings, the Supreme Court in *U.B.A. Plc v. Boney Marcus Ind. Ltd*³ opined thus:

Garnishee proceedings are a process of enforcing a money judgment by the seizure or attachment of the debts due or accruing to the judgment debtor which form part of his property available in execution. It is therefore specie of execution of debts for which the ordinary methods of execution are in applicable. By this process the court has the power to order a third party to pay direct to the judgment debtor or as much of it as may be sufficient to satisfy the amount of the judgment and the costs of the garnishee proceedings

There are three parties to garnishee proceedings namely, the judgment creditor, judgment debtor and the third party called the garnishee. The Court of Appeal in the case of *C.B.N v. Auto Import Export*⁴ laid down the parties as follows:

In garnishee proceedings, the third party indebted to the judgment debtor is called the garnishee. The judgment creditor, on the other hand is referred to as the garnishor. Undoubtedly, the garnishor and the garnishee as well as the judgment debtor constitute parties to the proceedings.

The Court of Appeal in *STB Ltd v. Contract Resources (Nig) Ltd*⁵ defined a “garnishee” thus:

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.

On the status of a judgment debtor in a garnishee proceeding, the Court of Appeal gave conflicting decisions. In *Nitel Plc v. I.C.I.C (Directory Publisher) Ltd*⁶ the Court, held thus:

A garnishee proceeding in other words is a process leading to the attachment of debt owed to a judgment debtor by a third party who is indebted to the judgment debtor. The proceeding is strictly between the judgment creditor and the third party who is indebted to the judgment debtor. It is not a proceeding against the judgment debtor directly.

Similarly, the Court, in *Wema Bank Plc v. Brastem-Sterr (Nig.) Ltd*⁷ held as follows:

It is in disputable from the nature of Garnishee Proceedings that the judgment debtor is just a passive respondent as the provision under S. 83 (1) refers specifically to the garnishee appearing before the court to show cause. The garnishee is the main party under the statute and should be the one reacting to the proceedings; nevertheless the judgment debtor must be put on notice of what happens to money due to him in the possession of garnishee. The service is fundamental in the light of the principle of being heard in a matter touching on his right

Conversely, in *N.A.O.C. Ltd v. Ogin*⁸ the Court held thus:

Where the court grants the order nisi on the garnishee, the Registrar through the Sheriff of the court must serve on the garnishee, the judgment creditor and the Judgment debtor the Order Nisi on Form 26 of JER. The Registrar must then fix a date not less than 14 days after the service of

¹ (1962) 3 All ER 12 at 16.

² *Ibrahim v. Emein* (1996) 2 NWLR (Pt.430) 325 at 336 para H.

³ (2005) 13 NWLR (Pt.943) 657 at 666 paras E-F.

⁴ (2013)2 NWLR (Pt.1337) 87 at 126 paras F-G.

⁵ (2001) 6 NWLR (Pt. 708) 117 at 123 paras G-F.

⁶ (2009)16 NWLR (Pt. 1167)363 at 387 para H.

⁷ (2011) 6 NWLR (Pt.1242) 65 at 79 paras D-F.

⁸ (2011)2 NWLR (Pt. 1230) 137 at 153 paras G-A.

the order nisi on the judgment creditor, the judgment debtor and the garnishee for hearing. This subsequent hearing envisages a tripartite proceeding in which all interest are represented. That is when the judgment debtor has the opportunity to convince the court to discharge the order nisi by filling affidavits to that effect. After that hearing on notice, the court may discharge the order nisi or made an order absolute.

In the same vein, in *Nigerian Breweries Plc v. Dumuje*¹ the Court, per Barka J.A.C, held that:

There is no argument to the legal requirement under section 83 (2) that the judgment creditor must commence the garnishee proceedings by way of *ex parte* application for the grant of an order nisi together with the originating process or any other order affecting his interest on the judgment debtor. The consequence of such service on the judgment debtor in my view avails the judgment debtor the right to be heard as to whether the order nisi ought to be made absolute. This would be consonance with the constitutional provision of fair hearing enshrined in section 36 (1).

However, the Supreme Court seems to have addressed the conflicting position in *C.B.N v Interstella Comm. Ltd*² where the court held that: “The law is long settled that a garnishee proceeding is strictly between the judgment creditor and the garnishee who is indebted to the judgment debtor.” This position seems to be in line with provision of section 83 of the Sheriff and Civil Process Act, which does not require the judgment debtor to respond to the garnishee order nisi. It is our humble submission that the garnishee proceedings should be a tripartite proceedings which would accord to the constitutional provisions of fair hearing enshrined in section 36 (1) and (2) of the 1999 Constitution as amended. The judgment debtor should be given the opportunity to be heard as enunciated in *N.A.O.C. Ltd v Ogini and Nigeria Breweries Plc v Dumeje*.³ To this end, there is the need to amended section 83 of the Sheriffs and Civil Process Act to provide for a tripartite proceeding.

Sections 83-92 of the Sheriffs and Civil Process Act makes provision for garnishee proceedings. Under the garnishee proceedings, by a garnishee order the court orders the garnishee to pay money belonging to the judgment debtor in its custody or debt to the judgment creditor in satisfaction of the judgment debt.

3.1 Procedure

Garnishee proceedings may be initiated in any competent court of record in which the judgment debtor could sue the garnishee for the purpose of recovering the debt, in accordance with appropriate rules of court.⁴ A judgment creditor files an *ex parte* application for garnishee order nisi. The application will be supported by an affidavit which must state the following facts: the name, addresses and occupation of the judgment creditor, the judgment debtor and the garnishee; that judgment has been given and on what date; the judgment is still unsatisfied; the amount of the judgment debt that remains unsatisfied; that any other person is indebted to the judgment debtor and within the State and attach a certified true copy of the judgment if it was obtained in a court other than the court hearing the application.⁵ If on the hearing of the application the court finds it meritorious, an order nisi will be issued as in Form 26 in the 1st Schedule to Sheriffs and Civil Process Act, ordering the garnishee to appear in court to show cause why an order should not be made against the garnishee to pay the judgment creditor the debt owed to the judgment debtor⁶ The garnishee and the judgment debtor shall be served with the order nisi, at least 14 days before the date slated for hearing of the matter.⁷ The service of the order nisi on the garnishee effectively attaches the debt until the matter is heard.⁸ If the garnishee does anything with the debt contrary to the court’s order, he will be liable to contempt proceedings. In *U.B.A. Plc v. Ekanem*⁹, the 1st respondent obtained judgment against the 2nd respondent at the trial and applied for garnishee proceedings against the appellant, the bankers to the judgment debtor. An Order Nisi was granted on the 9/10/2005, which was served on the appellant to appear before the High Court to show cause why the order nisi should not be made absolute. The garnishee did not file an interpleader summons so the order nisi was made absolute and served on the appellant. This led to the attachment of the appellant properties which compelled the appellant to issue a draft in the judgment sum of N5, 000,000.00 in favour of the 1st respondent. On the same day, the 2nd respondent, who was the judgment debtor, served the appellant with a notice of appeal and motion for stay of execution. Seeing the process filed by the 2nd respondent, the appellant through one of its officer countermanded

¹ (2016) 8 NWLR (Pt.1515) 555 at 622-623 paras F-G.

² (2018)7 NWLR (Pt.1618) 302 at 339 para H.

³ See notes 13 and 14.

⁴ Order 8 rule 4 Judgment (Enforcement) Rules.

⁵ Section 83 Sheriffs and Civil Process Act.

⁶ Ibid. Also, *F.M.B.N Ltd v. Desire Gallery Ltd* (2004) 13 NWLR (Pt.891) 527 at 541 paras A-B.

⁷ Section 83 (2) of the Sheriffs and Civil Process Act.

⁸ Section 85 *ibid*.

⁹ (2010) 2 NWLR (Pt.1177) 181.

the draft that was earlier issued and filed an application on the 12/12/2005 praying the lower court that value should not be given to the draft of N5,000,000.00 issued pending the determination of the appeal filed by the 2nd respondent. Against this backdrop, the 1st respondent filed an application on the 19/12/2005 asking the court that N5,000,000.00 being unlawfully retained by the garnishee/judgment debtor /respondent be kept at 10% monthly interest from when the Order was made till the whole sum is fully paid and the sum of N1,000,000.00 as the cost of the suit and N1,000,000.00 as general, special and exemplary damages. The court delivered ruling and order the money be kept with appellant and to attract interest at 10% per annum, N500,000.00; N100,000.00 and N50,000.00 as payment for legal fees, general damages and the cost of the action to the judgment creditor respectively. Being dissatisfied with the ruling, the appellant appealed to the Court of Appeal. The Court of Appeal in considering the options open to a judgment creditor where garnishee order is disobeyed by the garnishee, Akaahs, J.A.C, stated as follows:

I find the submissions of the learned counsel for the appellant on the options opened to the judgment creditor/respondent quite appropriate. The officer of the Bank who countermanded the cheque could have been committed for contempt for disobeying the Garnishee order absolute. In addition the judgment creditor had a right to institute an action against the Garnishee/Judgment Debtor claiming damages for the dishonored cheque.¹

The garnishee has 8 days² from the day of service of the order *nisi* to either pay the debt or file an affidavit to show cause. On the day of hearing, if the garnishee fails to file an affidavit to show cause, or if the garnishee files and the court finds it unmeritorious, the court will proceed to make the order absolute. However, if the court finds the affidavit meritorious, the garnishee will be discharged accordingly. The order absolute ends the proceedings.³ The next option is to appeal against the order.

4. The Requirement of Consent of the Attorney General

Section 84 (1) (3) of the Sheriff and Civil Process Act, provides thus:

(1)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.

(3) In this section “appropriate officer” means

- (a) in relation to money which is in the custody of a public officer who holds a public office in the public service of the Federation, the Attorney-General of the Federation;
- (b) in relation to money which is in the custody of a public officer who holds a public office in the public service of the State, the Attorney-General of the State.

The next most pertinent issue to be addressed is the question of who is a public officer. The Court of Appeal in *C.B.N v. Hydro Air PTY Ltd*⁴ defined public officer as follows: “the term public officer is equated with public department and includes every officer or department invested with the performance of public duties.” From the above provisions before a court will entertain an application for the attachment of money under the custody or control of a public officer, the consent of the appropriate Attorney General must be sought. It should be noted that money belonging to a public officer in a commercial bank does not fall within the scope of section 84 of the Sheriff and Civil and Process Act. In *Purification Technique Nig. Ltd v. A.G. Lagos*⁵ the Court of Appeal held that monies in the hands of a garnishee banker are not in the custody or 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 on demand. The court held that the monies held by the respondent, the Attorney General of Lagos State, in the garnishee bank were not under the custody or control of the respondent or a public officer. Consequently, the monies are not subject to section 84 of the Sheriff and Civil Process Act.

5. Judicial Attitude of the Court to the Requirement of Consent of the Attorney General

The court in a plethora of judicial authorities gave judicial approval to the provision of section 84 of the Sheriff and Civil Process Act quoted above. In *Onjewu v. K.S.M.C.I*⁶ the Court of Appeal per Muntaka-Coomassie held thus:

¹ Ibid at 196 paras F-G.

² Form 26 in the 1st Schedule to the Sheriff and Civil Process Act.

³ *U.B.A. Plc v. Magama (Ltd)* (2013) 16 NWLR (Pt. 1379) 40 at 53-54 paras G-A.

⁴ (2014) 16 NWLR (Pt. 1434) 492 at 521 paras D-F.

⁵ (2004)9 NWLR (Pt.879) 665.

⁶ (2003) 10 NWLR (Pt. 827) 48 at 78-79 paras A-B.

I hold that since the demand for the consent of the Attorney General of a State is sort of a procedural and administrative in nature and it has not made any violence to the Constitution, it can be tolerated and accepted. I hold that the requirement of consent or authorization/permission of the Attorney of a State is necessary before judgment of a High Court can be enforced.

Similarly, in the case of *C.B.N v. Hydro Air PTY Ltd*¹ the court held thus:

Prior consent of the Attorney General under section 84 of the Sheriff and Civil Process Act is necessary and mandatory before the judgment of a court can be properly enforced against the State. Obtaining such fiat is a condition precedent which must be complied with before a judgment creditor can enforce a judgment against the State and failure of the judgment creditor to obtain same robs the court of the jurisdiction over the judgment enforcement proceedings and renders the proceedings a nullity. Such step is a necessary procedural safeguard needed by government to avoid embarrassment and it does not violate section 287 (3) of the Constitution of the Federal Republic of Nigeria 1999. In this case the trial court was wrong; when it ordered the attachment of the funds in the hands of the appellant notwithstanding the fact that it had held the respondent failed to comply with the provision of section 84 of the Sheriff and Civil Process Act

On the rationale for the requirement of Attorney General's consent under section 84 of the Sheriffs and Civil Process Act, the court in *Onjewu v. K.S.M.C.*² per Oduyemi J.C.A held that:

In my humble view, the rationale for the provision in section 84 (1) of the Sheriff and Civil Process Act for the provision of consent of Attorney General before a court could validly issue even an order garnishee nisi against funds in the hands of a public officers is to ensure that moneys that have been voted by the House of Assembly of a State for a specific purpose in the appropriation Bill presented to that House and approved in the budget for the year of appropriation does not end up being the subject of execution for other unapproved purposes under the Sheriffs and Civil Process Law.

It is humbly submitted that the attitude of the court in the interpretation of section 84 of the Sheriff and Civil Process Act as enunciated in the above mentioned cases is rather not in consonance with provisions of the 1999 Constitution as amended. The rationale given above seems plausible but certainly not tenable, because the powers of the court cannot be subjected or subordinated to the authority of another person. In *Purification Technique Nig Ltd*³ it has been settled that monies in garnishee banks that does not fall under the definition of a public officer are not cover under the provisions of section 84 of the Sheriff and Civil Process Act. By virtue of this authority, if a person gets judgment against a government department or ministry and discovered that the judgment debtor has money with Diamond Bank either appropriated or not, the judgment creditor can garnishee the money without the consent of the Attorney General, since the bank is a not a public officer. To this end, the reason adduced in *Onjewu v. K.S.M.C.*⁴ is not tenable in the view of the illustration above.

Section 6 (1) (2) (6) (a) (b) of the 1999 Constitution as amended provided the judicial powers of the federation thus:

- (1) The judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for Federation.
- (2) The judicial powers of a State shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a State
- (6) The judicial powers vested in accordance with the foregoing provisions of this section-
 - (a) shall extend, notwithstanding anything to the contrary in this Constitution, to all inherent power and sanction of a court of law;
 - (b) shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person

Furthermore, section 36 (1) of the 1999 Constitution as amended provided thus:

In the determination of civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality

By virtue of the above provisions the judicial powers of the federation is vested in the courts and the courts are not subject to any authority as far as the determination of the civil rights and obligations of persons and the

¹ See note 26, 490 at 506-507, paras D-H (supra).

² See note 28, 53 at 88-89 paras H-A.

³ See note 27.

⁴ See note 28.

government is in question. Section 1 of the 1999 Constitution as amended stipulated the supremacy of the Constitution thus:

- (1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria
- (2) If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail, and that other law shall to the extent of the inconsistency be void

This provision found judicial expression in *N.U.T, Niger State v. COSST Niger State*¹ as follows:

The 1999 Constitution is the supreme law in the Country and its stands above any other enactment, Statutes or laws and its provisions cannot be made subject to any other Act. By virtue of the provision of section 1 (1) (3) of the 1999 Constitution, any law that is in consistent with the constitution shall to the extent of its in consistency be void.

The 1999 Constitution as amended supersede the Sheriff and Civil Process Act, therefore any of its provision that is inconsistent with the 1999 Constitution as amended shall be null and void. It is the writer's humble opinion that section 84 of the Sheriff and Civil Process Act amounts to subjecting the powers of the court to the authority of the Attorney General, since the court cannot grant garnishee Order *Nisi*, without the consent of the Attorney General first obtained, even if the court sees reason to do so. The provision is a negation of the powers of the court and therefore contrary to the 1999 Constitution as amended. The court is not an appendage to the office of the Attorney General. Subjecting the court to the whims and caprices of the Attorney General is contrary to the clear provisions of section 1 (1) (3) of the 1999 Constitution as amended.

Interestingly, some of the High Court judges seem to share this position as can be seen in some of their decision in this regard. For example, in *Maiyini Century Co. Nig. Ltd v. C.O.P Adamawa State*² the judgment creditor filed motion *ex parte* for the attachment of money from the garnishee, the Central Bank of Nigeria belonging to the judgment debtor. The motion was granted and the case adjourned for the garnishee to show cause. The garnishee on being served with the Order *Nisi*, filed a notice of preliminary objection challenging the jurisdiction of the court, on the ground that the judgment creditor did not seek the consent of the Attorney General as provided under section 84 of the Sheriff and Civil Process Act, Cap S6 Laws of the Federation of Nigeria 2004, before proceeding to attach the money with the garnishee, being a public officer. The Court in deciding the objection held thus:

I have read the said section 84 of the Sheriff and Civil Process Act, 2004. My reading and understanding of the said section 84 of that law clearly shows that it is a subsidiary legislation. My understanding of section 84 (1) (3) (a) clearly clashes with the provisions of section 6 (6) (a) (b) of the 1999 Constitution and 1 (1) and (3) of the same Constitution when it takes away all the inherent powers and sanctions of the court by subjecting the execution of orders of courts to the power of Attorney General.

Joseph Williams submitted and I agreed with him that section 84 of the Sheriff and Civil Process Act is subject to both the provisions of section 1 (1) and (3) and 6 (6) (a) (b) of the 1999 Constitution. Learned counsel submitted and I agreed with him that section 84 being in clear violation of section 1 (1) and (3) and 6 (6) (a) (b) of the 1999 Constitution must and should be declared null and void in as much as it subjects the sanction and powers of courts to that of the Attorney General. I therefore hold that section 84 (1) (3) (a) of the Sheriff and Civil Process Act, 2004 is unconstitutional and therefore null and void.

More so, it should be noted that actions against the government are filed in the name of the Attorney General.³ To this end, any law or policy that leaves a judgment creditor at the mercy of the Attorney General in whose name actions against the government are brought would amount to judgment creditor seeking permission from his adversary for the purpose of enforcing the judgment against him. In most cases, an Attorney General may be selfish to unreasonably refuse consent to a judgment creditor. It is submitted that instead of the requirement of the consent of the Attorney General, the judgment debtor should be made an active and not passive respondent in garnishee proceedings as enunciated in *N.A. O. C. Ltd v. Ogini and Nigerian Breweries Plc v. Dumuje*⁴, this will enable the court to exercise its judicial powers without any limitation. If the judgment debtor is a government agency or ministry which has money already appropriated with a garnishee that has been attached by Order *Nisi*. The judgment debtor at the point of hearing will bring that fact to the notice of the court and the matter will be

¹ (2012) 10 NWLR (Pt. 1307) 96 at 108 paras G-H.

² Unreported Suit No: ADSY/48M/2015 of 26/1/2015. The case was presided over by Hon. Justice A.D. Mammadi of the High Court of Adamawa State.

³ Section 20, Supreme Court Act cap. S15 Laws of the Federation of Nigeria 2004.

⁴ See notes 13 and 14.

decided on its merit. The law is settled that the Attorney General has a duty to assist in the execution of judgment against the State. This position was enunciated in *Onjewu v.K.S.M.C.I*¹ thus:

The position of the law has now changed. 1979 Constitution has brought a fundamental change in the body of the law of this Country. The archaic principle of law that the king will do no wrong and that 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 of a State to ensure that the Federal and State Government pay their lawful debts. The Attorney General can no longer fold his arm for the judgment creditors to write him soliciting for his consent before he can enforce the judgment given in his favour

6. Conclusion and Recommendations

The ultimate desire of a judgment creditor is to enjoy the fruits of his judgment. The responsibility of the court having delivered judgment in favour of a judgment creditor is to ensure that he enjoys the fruits of his judgment. This is in tandem with the court's powers as enshrined under section 6 (6) (a) (b) of the 1999 Constitution as amended. Section 84 of the Sheriff and Civil Process Act that tends to limit the power of the court by subjecting it to the authority of the Attorney General is certainly in conflict with the 1999 Constitution as amended. To this end, it is hereby recommended that:

- i. Section 84 of the Sheriff and Civil Process Act should be amended to remove the requirement of consent of the Attorney General before money under the control or custody of a public officer can be attached.
- ii. Section 83 (1) and Form 26 in the 1st Schedule to the Sheriff and Civil Process Act should be reviewed to capture the judgment debtor for the purpose of filing affidavit to show cause. The position as enunciated in *Nitel Plc v. I.C.I.C (Directory Publisher) Ltd and Wema Bank Plc v. Brastem-Sterr (Nig) Ltd*² and the Supreme Court position in *C.B.N v Interstella Comm. Ltd*³ should be overruled and the position in *N. A. O. C. Ltd v. Ogini and Nigerian Breweries Plc v. Dumuje*⁴ be upheld as it is in tandem with the powers of the court as enshrined under section 6 (6) (a) (b) and 36 (1) of the 1999 Constitution as amended.

¹ See note 28, 48 at 78 paras C-E.

² See notes 11 and 12.

³ See note 15.

⁴ See notes 13 and 14.