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Law and Practice

Adeyinka Aderemi, Chinasa Unaegbunam,
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Streamsowers & Köhn is a reputable full-service law firm with more than 50 skilled lawyers. Its head office is in Lagos, with branch offices in Abuja and Port Harcourt, Nigeria. The firm specialises in various practice areas, including arbitration, aviation, banking, insurance and intellectual property. Leveraging its intellectual capabilities, managerial expertise, technological proficiency and extensive networks, Streamsowers & Köhn provides valuable legal services to a diverse clientele. Recent highlights include representing Teleglobe America Inc in enforcing a foreign judgment obtained from the County Court of Fairfax, Virginia, in which the court of appeal recognised the foreign judgment as being registrable in Nigeria, treating it as a judgment of the superior court based on the judgment's satisfaction of the provisions outlined in the Foreign Judgment (Reciprocal Enforcement) Act.

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1. Identifying Assets in the Jurisdiction

1.1 Options to Identify Another Party's Asset Position

There are no rules or procedures for identifying the asset position of another party in Nigeria, nor for asset disclosure, prior to or at the commencement of an action.

However, in the pendency of a suit, a party can obtain freezing orders to restrain a party from dissipating an asset, dealing with it or removing it from the jurisdiction of the court, having identified such asset. Freezing orders are subject to the discretionary powers of the court and are usually not granted unless a party shows sufficient reasons that it is necessary to preserve an asset. The principles guiding the decision of a court to grant freezing orders include that:

- there must be a justifiable cause of action against the defendant;
- there must be a real and imminent risk of the defendant removing their assets from the jurisdiction and thereby rendering nugatory any judgment the plaintiff may obtain;
- the applicant must make a full disclosure of all material facts relevant to the application;
- the applicant must give full particulars of the assets within the jurisdiction;
- the balance of convenience must be on the side of the applicant; and
- the applicant must be prepared to give an undertaking as to damages.

Post-judgment, a successful party to a suit can initiate garnishee proceedings for the enforcement of monetary judgments against a judgment debtor, having identified third parties in custody of a judgment debtor's money (garnishees). In such a case, a court may make an order nisi (initial order) directing garnishees (eg, banks) to disclose any sum of money in their custody that belongs to a judgment debtor, and to show cause why they should not be ordered to pay such sum to the judgment creditor. Upon disclosure by the garnishees, the order nisi is made absolute against the garnishees, mandating them to pay the judgment debtor's funds disclosed as being in their custody to the judgment creditor.

Other options available to obtain information about another party's asset include a search at the Land Registry of the state where the party's immovable property has been identified. Such a search would typically disclose information regarding registered ownership, assignment of interest, encumbrances and discharge of any encumbrance on a property. A party can also conduct a search at the Corporate Affairs Commission (the entity established to regulate the formation and management of companies in Nigeria) to ascertain the shareholding of a party in a company registered in Nigeria, including any charges, mortgages or liens on a company's assets.

2. Domestic Judgments

2.1 Types of Domestic Judgments

A "judgment" is a final decision of the court resolving a dispute between parties and determining their rights and obligations. However, a court may make interim and interlocutory orders before judgment is delivered in a suit. Interim and interlocutory orders are provisional in nature and are usually in the form of injunctions restraining a party from doing an act or mandating a party to act in a particular way.

Interim orders are expected to last for seven or 14 days, depending on the applicable court rules, or as directed by a court pending the hearing of an application that seeks to sustain the injunction until the determination of the suit or the occurrence of a particular event. Interlocutory orders, as they are called, usually take effect until judgment is delivered in a suit.

By nature, judgments could be one or more of the following.

- Monetary judgments are for the payment of a sum of money, referred to as the judgment sum. The party to whom the judgment sum is to be paid is referred to as the judgment creditor, while the party directed to pay the judgment sum is referred to as the judgment debtor. Such judgment takes effect from the date it is pronounced or delivered in court.
- A declaratory judgment is one that confirms or denies a legal right or entitlement, or the position of the law, but contains no specific order to be carried out by the successful party or enforced against the unsuccessful party. Declaratory judgments are discretionary and are granted only in circumstances where the court is convinced by credible evidence. Therefore, declaratory judgments are not given in default of defence or on admissions without the court hearing evidence and being satisfied by such evidence that the plaintiff is entitled to the declaration sought.
- Executory judgments are those which declare the respective rights of the parties and then proceed to order the unsuccessful party to act in a certain way – eg, to refrain from interfering with the plaintiff's rights and pay certain sums or damages for any prior interference. Executory judgments are enforceable if disobeyed.
- Default judgments are usually delivered upon the defendant's failure to follow certain rules of procedure, such as failing to appear in a suit or failing to file a defence to the plaintiff's claims. Such a judgment may be set aside by the court that granted it, upon application by the defendant.
- A summary judgment is one that is given without trial where, upon consideration of the documents filed by the parties at the inception of the suit, the court finds that a defendant has no defence to the claimant's claim. Only claims of liquidated money demand (an ascertained or ascertainable sum of money by simple calculation without any other or further investigation) can be the subject of a summary judgment. Although not preceded by a trial, a summary judgment is given on the merits and can only be set aside on appeal.
- Consent judgments are entered pursuant to the mutual consent of the parties to a suit, who would have filed papers in court containing the terms of settlement of the dispute between them and asked the court to enter said terms as the judgment in the suit. Such judgment serves as a final determination of the dispute between the parties.

2.2 Enforcement of Domestic Judgments

The modes of enforcing domestic judgments in Nigeria, including procedures, are outlined below.

Writ of Attachment and Sale (Writ of Fieri Facias)

A judgment sum becomes immediately due and payable upon a pronouncement in a judgment.

A writ of fieri facias (fi. fa.) is issued for execution against the goods, chattels and immovable property of the judgment debtor for the recovery of any sum of money payable under a judgment of a court in case of default or failure of payment. The writ is obtained by completing the praecipe form at the registry of the court.

The writ empowers the sheriff of the court to seize and sell the judgment debtor's property within the jurisdiction to satisfy the judgment debt (except wearing apparel and bedding of the judgment debtor or their family and the tools and implements of their trade, to the value of NGN10). The proceeds from the sale are used to cover sale expenses and offset the judgment debt, with any remaining balance being given to the judgment debtor.

In cases where the court has ordered the judgment sum to be paid in instalments, the writ can only be issued after the default in payment of some instalment, and execution may be for the remaining sum and costs then unpaid, or for a part of it as the court may order (either in the judgment or subsequently).

Also, unless they are perishable in nature or the judgment debtor requests so in writing, the seized property cannot be sold until the expiration of a period of at least five days from the date of seizure.

Garnishee Proceedings

This is a method of enforcing a monetary judgment by recovery through third parties (garnishees) who are in custody of the judgment debtor's funds or indebted to the judgment debtor. The judgment creditor steps into the position of the judgment debtor to collect such funds. In most cases, the garnishees are bankers of the judgment debtor.

The judgment creditor files an application ex parte (without notice to the judgment creditor and the garnishees) and, upon being satisfied that the case is deserving, the court would make an order nisi (initial order) directing the garnishees to disclose the amount standing to the credit of the judgment debtor in their custody and show cause why such sums should not be attached and paid to the judgment creditor in satisfaction of the judgment. The order nisi is served on the garnishees, and each garnishee is expected to file affidavits in court disclosing the judgment debtor's monies in its custody, if any.

Upon disclosure by the garnishees, the order nisi is made absolute against the garnishees, mandating them to pay the judgment debtor's funds disclosed as being in their custody to the judgment creditor, in satisfaction of the judgment sum.

Bankruptcy/Insolvency Proceedings

In this mode of enforcement, where a judgment debtor defaults in payment of the judgment sum, the judgment creditor is at liberty to commence an action against the judgment debtor under bankruptcy proceedings in the case of an individual debtor or winding-up proceedings in the case of a company. However, it must be shown that the judgment debtor is unable to pay its debt in all instances.

Generally, it involves filing a petition and providing evidence of bankruptcy or insolvency. Once the judgment debtor is declared bankrupt or insolvent, their assets are liquidated and the proceeds are distributed among creditors according to their priorities.

Writ of Possession

This is issued for the recovery of premises where the judgment of the court is for the recovery of land, or for the delivery of possession of land, in an action other than an action between landlord and tenant. An application for a writ of possession is made by filing a praecipe form.

Writ of Sequestration

This is issued upon application to a judge against the property of a person who has had an order or warrant of arrest, commitment or imprisonment made against them but cannot be found, or where a person is taken and detained in custody without obeying the judgment of a court. An application for a writ of sequestration is made to a judge in the prescribed form.

Writ of Delivery

A writ of delivery is issued for the enforcement of a judgment for the delivery of goods. An application for a writ of delivery is made by filing a praecipe form.

Judgment Summons

This is issued by the court upon application of a judgment creditor where a judgment debtor defaults on payment of a judgment sum or any instalment. The judgment debtor is summoned to appear before the court for examination on oath as to their means. An investigation into the judgment debtor's means is conducted, and the court may make an interim order for the protection of any property applicable or available in discharge of the judgment debt. Upon the conclusion of investigations, the court may make one or more of the following orders:

- an order for the commitment of the judgment debtor to prison;
- an order for the attachment and sale of the judgment debtor's property;
- an order for the payment of money by instalments or otherwise by the judgment debtor; or
- an order for the discharge of the judgment debtor from prison.

2.3 Costs and Time Taken to Enforce Domestic Judgments

Compliance with a judgment is expected without the need for a demand or enforcement, as it becomes effective upon delivery unless the court specifies otherwise.

Enforcing a judgment in Nigeria entails costs and time, which vary depending on the specific circumstances of each case. The duration of the enforcement process is influenced by several factors, such as:

- the type of judgment (monetary or non-monetary);
- the chosen enforcement procedure employed;
- the amount of the judgment debt;
- the availability and knowledge of the judgment debtor's assets;
- the court from which the judgment originates;
- the specified timeframe for enforcement, if any was stated in the judgment;
- any actions taken by the judgment debtor (such as applying for a stay of execution); and
- the possibility of an appeal against the judgment or the order enforcing it.

In terms of costs, there are no fixed fees for enforcing a judgment. Typically, the costs include filing fees and expenses related to executing the judgment.

For monetary judgments, garnishee proceedings are often the most efficient option. This procedure allows the judgment creditor to recover the judgment sum by attaching the judgment debtor's funds in the hands of a third party (the garnishee).

Another effective option – particularly when the judgment creditor possesses knowledge or certainty regarding the assets of the judgment debtor within the court's jurisdiction – is the use of a writ of fi. fa., which involves seizing and selling the judgment debtor's properties and chattels to satisfy the judgment debt using the proceeds from the sale.

When a writ of fi. fa. is issued, it maintains a life span of one year from the day it was issued. Where the property attached is movable, it cannot be sold until five days after the day it was seized from the judgment debtor. However, such movable goods may be sold before the five days expire if they are of a perishable nature or if the judgment debtor makes a request to the court by written application.

For the enforcement of judgments against companies, a petition for winding-up is often effective where the company is unable to pay its debt.

Overall, the choice of the most efficient enforcement option depends on factors such as the type of judgment, the availability of assets, and the specific circumstances of the case.

2.4 Post-Judgment Procedures for Determining Defendants' Assets

There are no specific post-judgment procedures for determining what assets the defendant holds and/or where they are located. However, the judgment debtor's assets may be discovered through searches conducted at public asset registries like the Corporate Affairs Commission, the land registries of the various states, the Federal Lands Registry and the National Collateral Registry.

In certain circumstances, the High Courts can also grant orders like freezing orders, asset disclosure orders or such other orders by which a party can lawfully identify another party's assets in Nigeria. The power of the courts to do this is derived from Section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

The courts may also grant garnishee orders attaching funds or debts due from a third party to the judgment debtor and the use of the amount of that debt in liquidating the judgment debt. In granting garnishee orders, the courts direct the third party to disclose the amount standing to the credit of the judgment debtor in such third party's custody and control.

Finally, a party can find out what assets the judgment debtor owns through the evidence of the judgment debtor during trial (evidence on oath).

2.5 Challenging Enforcement of Domestic Judgments

An unsuccessful party may challenge the enforcement of domestic judgments by:

- applying to the court where the judgment was delivered (trial court) for it to be set aside if the judgment was not given on the merits – ie, where the judgment did not determine the substantive rights of the parties but was based on matters of practice and procedure; or
- appealing the judgment and obtaining an order for the execution of the judgment to be halted pending the determination of an appeal against the judgment, in which case the judgment cannot be enforced pending the appeal.

2.6 Unenforceable Domestic Judgments

An application to set aside a judgment filed at the trial court may be made on the following grounds:

- when a judgment is obtained by fraud or deceit;
- when the judgment is a nullity;
- when it is obvious the court was misled into giving judgment under a mistaken belief that the parties consented to it; or
- where the originating processes in the suit giving rise to the judgment were not served on the defendant.

In granting such application, the court would generally consider:

- whether it can be shown that the judgment was obtained by fraud of one of the parties;
- the reasons for the applicant's failure to appear at the hearing of the suit;
- whether the party in whose favour the judgment was given would be prejudiced or embarrassed if an order of re-hearing of the suit were to be made, thus rendering such a course inequitable;
- whether there has been undue delay in making the application;
- whether the applicant's case is manifestly unsupportable; and
- whether the applicant's conduct throughout the proceedings had been such as to make their application worthy of sympathetic consideration.

Appealing the Judgment and Obtaining a Stay of Execution

On appeal, a judgment debtor may apply for a stay of execution of the judgment being appealed – ie, an order suspending the execution/enforcement of the judgment during the period of the appeal. In granting such an application, the court would generally consider special or exceptional factors, including:

- the chances of the applicant on appeal;
- the nature of the subject matter in dispute;
- whether the applicant will not be able to reap the benefit of the judgment on appeal if the appeal succeeds;
- where the judgment is in respect of money and costs, whether there is a reasonable probability of recovering these back from the respondent where the judgment has been enforced and the appeal succeeds; and
- where the effect will be to deprive the appellant of the means of prosecuting their appeal.

2.7 Register of Domestic Judgments

There is no central register of all judgments delivered in Nigerian courts. However, the registrar or any other proper officer of a court is required to keep a book called the "Nigeria Register of Judgment".

Where a judgment delivered in one state is to be enforced in another state in Nigeria, a judgment creditor must apply to the registrar of the court that delivered the judgment for a certificate of judgment to be issued. The judgment creditor is then required to take said certificate to the registrar of any court of similar jurisdiction in the state where the judgment is to be enforced, where the registrar of that court would record the following particulars in the Nigeria Register of Judgment:

- the name of the court;
- the index number of the registration;
- the date of registration;

- the full title and suit number;
- an abstract of the judgment;
- the date of the judgment;
- the full title of the court issuing the certificate;
- the name and address of the party to whom payment is to be made or in whose favour the judgment is given or made;
- the name and address of the party ordered to pay money, or to do or not do any act;
- remarks; and
- the signature of the registering officer.

From the date of registration, the certificate becomes a record of the court in which it is registered and shall have the same force and effect in all respects as a judgment of that court, such that proceedings may be taken upon the certificate as if the judgment had been a judgment of that court.

The registrar of the court where the judgment is to be enforced is required to give written notification under the seal of the court, to the registrar or another proper officer of the court, where the judgment was given when:

- a certificate of judgment is registered in any court;
- any process is issued in any court upon such certificate; or
- satisfaction of the judgment either in whole or in part is entered upon any such certificate.

Once notified of the satisfaction of the judgment, the registrar of the court where the judgment was given is required to register the satisfaction and notify the registrar of the court where a certificate of the judgment has been registered of said satisfaction. Upon such notification, that registrar must also register the satisfaction of the judgment on the certificate.

Nigerian laws are silent on how and when the name of a judgment debtor can be removed from the register after the satisfaction of a judgment sum. However, as a matter of evidence, such satisfaction would be recognised by courts upon proof thereof.

3. Foreign Judgments

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

Nigeria is not a signatory or party to any treaty or convention on the recognition and enforcement of foreign judgments; therefore, no international treaties/conventions are relevant in this regard.

For the enforcement of a foreign judgment in Nigeria, the following laws are relevant:

- the Reciprocal Enforcement of Judgments Ordinance, 1922, Cap 175 Laws of the Federation of Nigeria and Lagos, 1958 (the Ordinance);
- the Foreign Judgments (Reciprocal Enforcement) Act, 1990, Cap F35, Law of the Federation of Nigeria 2004 (the 2004 Act);
- the Sheriffs and Civil Process Act 1945, Cap S6, Law of the Federation of Nigeria 2004;
- the Judgment Enforcement Rules under Section 94 of the Sheriffs and Civil Processes Act; and
- the various civil procedure rules of the superior courts before which registration and enforcement are sought.

The 2004 Act stipulates that a foreign judgment must first be registered in Nigeria in order to be enforced. The judgment must be final and conclusive (Section 3 (3) of the 2004 Act states that a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court). The judgment must also be obtained from a court that has the jurisdiction to adjudicate over the matter. A foreign judgment that does not conform with the requirements of the 2004 Act cannot be registered and enforced in Nigeria.

The 2004 Act empowers the Nigerian Minister of Justice (the “Minister”) to make an order extending its application to any foreign country with substantial reciprocity of treatment on enforcement of judgments made by a superior court in Nigeria. A superior court is defined in the Act as the High Court of a State or the Federal Capital Territory, Abuja, or the Federal High Court. The 2004 Act applies to countries with which the Minister has made such an order of extension.

In *Macaulay v RZB*, Austria (2003) 18 NWLR (Pt. 852) 282, the Supreme Court of Nigeria held that the Ordinance still applies to the United Kingdom and to dominions to which it was extended by proclamation under Section 5 of the Ordinance before the coming into force of the 2004 Act, until the Minister makes an order under Section 3 of the 2004 Act extending the Act's application to the United Kingdom or other dominions to which the Ordinance earlier applied.

Furthermore, the 2004 Act allows the registration of foreign judgments prior to the commencement of an order of the Minister extending the applicability of the 2004 Act to a country, within 12 months from the date of the judgment or within any longer period permitted by a superior court in Nigeria.

The Minister is yet to make an order of extension to other countries outside of the Commonwealth as provided under the 2004 Act. Thus, the current position under both the Ordinance and the 2004 Act is that a foreign judgment is registrable within 12 months of the date of judgment subject to any extension by a superior court of Nigeria.

3.2 Variations in Approach to Enforcement of Foreign Judgments

In Nigeria, the approach to the enforcement of foreign judgments does not vary by the type of judgment. By the provision of the 2004 Act and the Ordinance, the approach is the same: every foreign judgment must first be registered in Nigeria before it can be enforced in Nigeria. It is important to state that the registration should be done in the court that has the jurisdiction to entertain the subject matter of the judgment. Therefore, it should be registered in the State High Court, the Federal High Court or the High Court of the Federal Capital Territory in Nigeria as applicable.

3.3 Categories of Foreign Judgments Not Enforced

The categories of judgment that will not be registered in Nigeria are stated in the Ordinance and the 2004 Act.

Under the Ordinance, a foreign judgment is not enforceable if:

- the original court acted without jurisdiction;
- the judgment debtor was not subject to the jurisdiction of the original court – ie, the judgment debtor did not reside nor carry on business within the jurisdiction of the original court and did not submit to that court's jurisdiction;
- notwithstanding the judgment debtor's residence or business within the court's jurisdiction, the judgment debtor was not served with the court process and did not appear in the proceedings;
- the judgment was obtained by fraud;
- there is an appeal pending on the judgment, or the judgment debtor satisfies the court that it intends to appeal against the judgment; or
- the judgment was in respect of a cause of action that for reasons of public policy could not have been entertained by the registering court.

Under the 2004 Act, a foreign judgment is not enforceable if:

- it is an interim or an interlocutory order;
- it is obtained from an inferior court in the foreign country;
- it is not in respect of a monetary sum or, where in respect of a monetary sum, the sum is payable in respect of taxes, or other charges of a similar nature; or
- at the date of the application for registration and enforcement, it had been wholly satisfied or could not have been enforced by execution in the country of the original court.

3.4 Process of Enforcing Foreign Judgments

To register a foreign judgment in Nigeria, the judgment creditor files a motion ex parte (an application without notice to the other party, thus, the judgment debtor may not be served) seeking leave of the court (the State High Court or Federal High Court) to register the judgment. The application could also be by a motion on notice. Where the application is made ex parte, the judge has the discretion to direct that the judgment debtor be put on notice.

The court can enforce a successfully registered judgment in compliance with the provisions of the Sheriffs and Civil Processes Act in the same way as a domestic judgment. The process of such enforcement includes the following.

Garnishee Proceedings

This process entails attaching any money that belongs to the judgment debtor but is in the custody of a third person, known as the "garnishee". The judgment creditor files an application for the grant of garnishee order nisi. The application filed by the judgment creditor is served on the garnishees, along with the enrolment of the order nisi of the court to show cause why the money to the credit of the judgment debtor should not be attached and paid to the judgment creditor. Where the procedure is successful, the court will make the order nisi absolute for the satisfaction of the foreign judgment.

Writ of Fi. Fa.

A writ of fi. fa. is issued for execution against the goods, chattels and immovable property of the judgment debtor for the recovery of any sum of money payable under a judgment of a court in the case of default or failure of payment. The writ is obtained by completing the praecipe form at the registry of the court. This is applicable where the amount obtained from the garnishee proceedings is insufficient to pay off the judgment sum.

3.5 Costs and Time Taken to Enforce Foreign Judgments

The costs involved in the enforcement of a foreign judgment include the professional fees of the legal practitioner who will represent the judgment creditor, the monetary sum of the foreign judgment that is expected to be registered and the statutory cost of the court where the foreign judgment will be registered. Under the provisions of the Sheriffs and Civil Process Act, the costs of the garnishee proceedings, together with the debt owed, are directed by statute to be paid by the garnishee within a time prescribed by the court.

When a writ of fi. fa. is issued, it maintains a life span of one year from the day it was issued. Where the property attached is movable, it cannot be sold until five days after the day it was seized from the judgment debtor. However, movable goods may be sold before the five days expire if they are of a perishable nature or if the judgment debtor makes a request to the court by written application.

In general, a writ of fi. fa. and an order for garnishee proceedings are most appropriate where the foreign judgment to be enforced is a monetary sum.

It usually takes between six months and one year to enforce a foreign judgment. Under the provisions of the 2004 Act, a foreign judgment can be enforced at any time within six years from the date it was delivered. This estimated period can extend where enforcement is being challenged.

3.6 Challenging Enforcement of Foreign Judgments

The following legislation governs the registration and enforcement of foreign judgments in Nigeria:

- the Reciprocal Enforcement of Judgments Ordinance, 1922, Cap 175, Laws of the Federation of Nigeria and Lagos, 1958 (the Ordinance); and
- the Foreign Judgments (Reciprocal Enforcement) Act, 1990, Cap F35, Law of the Federation of Nigeria 2004 (the 2004 Act).

The Ordinance

The registration and enforcement of a foreign judgment may be challenged under the Ordinance on the following grounds:

- the original court acted without jurisdiction:
  - (a) the judgment debtor was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, and did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or
  - (b) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court, and did not appear notwithstanding that they were ordinarily resident or were carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;
- the judgment was obtained by fraud;
- the judgment debtor satisfies the registering court that either an appeal is pending or they are entitled and intend to appeal against the judgment; or

- the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

The 2004 Act

Under the 2004 Act, a judgment debtor may challenge the registration and enforcement of a foreign judgment in Nigeria on the grounds that:

- the judgment sought to be registered and enforced is an interim or interlocutory order;
- the judgment was obtained from an inferior court in the foreign country;
- the judgment is not in respect of a monetary sum or, where it is in respect of a monetary sum, the sum is payable in respect of taxes or other charges of a similar nature; or
- at the date of the application, the judgment had been wholly satisfied, or the judgment could not have been enforced by execution in the country of the original court.

4. Arbitral Awards

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

The legal issues relating to enforcement of an arbitral award are as follows.

Arbitrability of the Subject Matter

The arbitrability of the subject matter of the dispute is one of the key considerations by the courts in Nigeria in the enforcement of arbitral awards.

Invalidity of the Arbitration Agreement

Where the arbitration agreement is not valid under the law indicated by the parties in their contract or for whatever reason under the law of the country where the award was made, the arbitral award will not be enforceable.

Tax Disputes

Tax disputes are considered not arbitrable in Nigeria. In *Esso Exploration and Production (Nig) Ltd v FIRS* [2017] LPELR-51618 (CA), the Court of Appeal decided that tax disputes are not arbitrable in Nigeria because tax is a matter regulated by statute and is a matter of public interest that cannot be settled by arbitration.

Public Policy Considerations

Regard would also be had to whether the contract sought to be enforced is contrary to public policy. For instance, if the subject matter of the contract is illegal, the Nigerian courts would refuse to enforce the award on the basis that it is contrary to the public policy of Nigeria to enforce illegal contracts.

Time Limitation

Section 8 (1)(d) of the Limitation Law of Lagos State (with similar provisions in the Limitation Laws of other states in Nigeria) provides that every application to enforce an arbitral award must be brought within six years from the date the award was given. The implication is that a party cannot successfully bring an action for the enforcement of an arbitral award outside the statutory six-year limit.

Judicial Interference: Merit Reviews of Arbitral Awards and Delays

Nigeria recently enacted the Arbitration and Mediation Act, 2023 (AMA), repealing the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria 2004 (ACA). The Act clearly seeks to eliminate the frequent interference by the courts in arbitral proceedings and awards. Under the ACA and the Act, the national courts are precluded from interfering in arbitral proceedings and awards, except under stringent and limited grounds provided in the Act itself. Equally, the court cannot consider the merit of the arbitral award as the court is not sitting in appellate jurisdiction over the arbitral proceedings and award. Under the ACA, practitioners had frequently used the omnibus grounds of “misconduct of the arbitrator” or “an error on the face of the award” to ask the court to set aside awards. These omnibus grounds then became an unruly horse and weaponised delays to the enforcement of awards in the national courts.

However, this bar to arbitration and the enforcement of awards in Nigeria has now been decisively dealt with under the new Act, Section 55 (2) of which expressly prevents a court from setting aside an arbitral award on “the ground of an error on the face of the award". This essentially prevents the court from overturning an award on the basis that it believes the tribunal incorrectly applied the law. Section 55 (5) of the Act introduces a more onerous test for an award to be set aside, which is likely to result in fewer successful challenges to arbitral awards in courts. It is no longer sufficient for a party simply to show that one of the grounds for setting aside an award is present; it must also show that the ground "has caused or will cause substantial injustice to the applicant". The Act, therefore, adopts a far more robust approach to the setting aside of arbitral awards, reducing the ability for the courts to intervene in, and potentially set aside, arbitral awards, thereby enhancing the finality and preservation of the awards.

According to Section 56 (1) of the AMA, parties may stipulate in their arbitration agreement that an application to review an arbitral award be made to an Arbitration Review Tribunal (ART). Like the court, the ART is unable to review an award on the merits and can only set aside an arbitral award on specified grounds. The AMA empowers the court to review the decision of the ART. The court may uphold the reviewed decision of the ART or set it aside for the status quo to revert to the original award. The degree of judicial intervention is limited by Subsection 9, which provides that the court may only set aside an award made by the ART where the subject matter in dispute is not capable of settlement by arbitration under the laws of Nigeria, or where the award is contrary to public policy.

Section 56 (7) of the AMA provides that an application to the ART does not preclude an application to the court; an application for review by the court or the ART must be made within three months from the date the award was received. Thus, to fall within the limitation period, an aggrieved party may simultaneously institute an action in court for the enforcement of the award without prejudice to the proceedings at the ART. The proceedings may be stayed pending the determination by the ART and may be resuscitated thereafter.

4.2 Variations in Approach to Enforcement of Arbitral Awards

In Nigeria, the approach to enforcement is the same for different types of arbitral awards. The few exceptions are awards given by the International Centre for Settlement of Investment Disputes (ICSID) and awards with certain subject matters. Section 1 (1) of the ICSID (Enforcement of Awards) Act Cap I20, Laws of the Federation of Nigeria, 2004 provides that, if it is expedient to enforce an award made by the ICSID in Nigeria, a copy of the award duly certified by the Secretary-General of the Centre shall be filed directly at the Supreme Court of Nigeria by the party seeking its recognition for enforcement in Nigeria.

Except for ICSID awards, other arbitral awards can be enforced at the Federal High Court, the High Court of a state and the High Court of the Federal Capital Territory, Abuja, unless the parties agree otherwise.

The Act is silent on the subject matter jurisdiction of the court in enforcement proceedings that can be filed before a superior court as provided in the Act. A superior court is defined in the Act as the High Court of a State or the Federal Capital Territory, Abuja, or the Federal High Court. However, recent trends and decisions of the court lean toward registration and enforcement in the court whose jurisdiction covers the subject matter of the arbitral award sought to be enforced. Where the subject matter of the award sought to be registered is under the exclusive jurisdiction of the Federal High Court, as provided by Section 251 (1) of the 1999 Constitution, the Federal High Court would be the appropriate court to commence the enforcement proceedings.

4.3 Categories of Arbitral Awards Not Enforced

Arbitral awards are not enforceable in the following instances:

- if the party against whom an award is sought to be enforced furnishes proof of the presence of vitiating elements, such as:
  - (a) the arbitration agreement was invalid by reason of the incapacity of one of the parties thereto, or was not valid under the governing law of the jurisdiction of either the contract or the seat of arbitration;
  - (b) the award deals with a dispute that does not fall within the terms of the submission to arbitration;

(c) the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties; or
(d) the award has been set aside by a court at the seat of arbitration; or

- if the court finds that the subject matter of the dispute is not arbitrable under Nigerian law, or that enforcement of the award would be against public policy, as discussed in 4.1 Legal Issues Concerning Enforcement of Arbitral Awards.

The application for the enforcement of arbitral awards must be filed within six years of the date of delivery of the award.

4.4 Process of Enforcing Arbitral Awards

Enforcement of Domestic Arbitral Awards

In Nigeria, the available means of enforcing an arbitral award depend on the laws of the place where the award is to be enforced.

The AMA provides frameworks for the enforcing of arbitral awards in Nigeria, and the Lagos Arbitration Law 2011 provides for modes of enforcement of arbitral awards and interim measures. The appropriate procedure for enforcing a domestic award depends on the type of arbitral proceedings and the parties involved.

Order 43 Rule 1 of the High Court of Lagos State Civil Procedure Rules 2019 states that all applications shall be by motion, while Order 43 Rule 3 (1) states that every motion shall be on notice, unless otherwise provided or permitted by any law or rules. Therefore, an application for the enforcement of arbitral awards thereunder would be by a motion on notice.

Order 52 Rule 16 (1) of the Federal High Court (Civil Procedure) Rules 2019 provides that an application for enforcement of an award can be made through a motion ex parte (without notice to the other party). A widely held view is that the courts ought to order the application to be brought on notice to accord the other party the right to a fair hearing.

Furthermore, parties seeking to enforce an award must provide the arbitration agreement or, in the alternative, a certified copy of the arbitration agreement and the original arbitral award or a certified copy of the initial arbitral award, as provided under Section 32 (2) of the AMA. These documents would be attached to an affidavit in support of the application for the enforcement of arbitral awards.

Enforcement of Foreign Arbitral Awards

Under the provisions of Section 91 (5) of the AMA, an arbitration is international if:

- the parties to an arbitration agreement have their places of business in different countries at the time of the conclusion of that agreement;
- the seat of the arbitration, if determined under the arbitration agreement, or any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is situated outside the state in which the parties have their place of business; or
- the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one state.

The award emanating from an international arbitration can be enforced by any of the following procedures.

- Registration of the Award Under the Foreign Judgments (Reciprocal Enforcement) Act, 1990, Cap 1525, Law of the Federation of Nigeria 2004: Section 2 thereof defines foreign judgments as arbitral awards. The award will be registered with the Nigerian court that has jurisdiction to hear the dispute, and it will be enforced as the judgment of the court.
- Instituting an Action to Enforce the Award: In this case, a plaintiff will be required to prove to the court that there is an arbitration agreement, an arbitration award and an absence of irregularity in the conduct of the arbitration.
- Enforcement Under the AMA: The AMA provides that an arbitral award is binding and enforceable in Nigeria regardless of the country in which it was made. The party seeking to enforce the award shall apply to the court by a motion on notice supported by an affidavit, the duly authenticated original award or a duly certified true copy thereof; the original arbitration agreement or a duly author-

ised true copy thereof; and where the award or arbitration agreement is not made in the English language, a duly authorised translation thereof into the English language.
- Enforcement Under the New York (Enforcement and Recognition of Arbitral Awards) Convention 1958, Which is Ratified in Nigeria: The AMA states that awards from an international arbitration are enforceable in Nigeria under the New York convention, provided the country it originated from will accord Nigeria similar recognition.
- Enforcement of Awards Made by the ICSID: Such awards are enforceable by registering them at the Supreme Court under Section 1 (1) of the ICSID Act.

4.5 Costs and Time Taken to Enforce Arbitral Awards

There are no specific/definite costs outlined or expected for the enforcement of an arbitral award. However, processing the enforcement of arbitral awards involves the payment of administrative fees, such as filing fees paid to the court and professional fees paid to counsel (which vary) for representation in court.

The law provides for a limitation period of six years within which an application for the enforcement of an arbitral award must be brought. There is no ambiguity in the timeframe within which an action to enforce an arbitral award must be brought. A proceeding to enforce an arbitral award typically lasts between 12 and 18 months. However, it is usual for unsuccessful parties to appeal the decision; the appeal process can take an indeterminable period, typically another two or three years.

4.6 Challenging Enforcement of Arbitral Awards

An arbitral award is regarded as a final judgment and, as such, courts are enjoined to, as much as possible, uphold or affirm and enforce arbitral awards when approached. However, the law recognises instances where the enforcement of an arbitral award may be challenged. Section 58 (1) of the AMA provides limited grounds for the challenge of the enforcement of an arbitral award, as follows.

- A Party to the Arbitration is Under a Legal Incapacity: The AMA provides that a person is under a legal incapacity if they are under the age of 18, or are of unsound mind. If it can be proven that a party was under any of these conditions at the time of entering into the arbitration agreement, then the award may be challenged on those grounds.
- Invalidity of the Arbitration Agreement: A party may challenge the enforcement of an arbitral award if the party furnishes proof that the arbitration agreement is not valid under the law to which the parties have indicated it should be applied, or that the arbitration agreement is not valid under the law of the country where the award was made.
- Lack of Service or Breach of Fair Hearing: A party may seek to challenge the enforcement of an award on the ground that proper notice of the appointment of an arbitrator or of an arbitral proceeding was not given, or that the party was otherwise not able to present its case.
- Jurisdictional Grounds: A party may challenge the enforcement of an arbitral award on the ground that the arbitrator had no jurisdiction as there was no valid and binding arbitration agreement or, if there was jurisdiction, the arbitrator exceeded that jurisdiction in the manner in which the decision was rendered. However, if the decision on the point not submitted to the jurisdiction of the arbitrator can be separated from the parts of the award submitted to the arbitrator, only the part of the award that contains decisions on the point not submitted may be set aside.
- Context of the Award: A party can also argue that the award was not made in accordance with the agreed rules of the arbitration, or that the composition of the arbitral tribunal was not in accordance with the agreement of the parties.
- The Matter of the Dispute is Not Capable of Settlement by Arbitration Under the Laws of Nigeria: Awards that determine matters that are not arbitrable under Nigerian law are not enforceable. Matters that are beyond the scope of arbitration in Nigeria include criminal matters, taxation matters, disputes involving the interpretation of the constitution, illegal contracts and matrimonial causes.
- Public Policy Reasons: In Nigeria, public policy is a ground for challenging an arbitral award. However, what constitutes public policy and when an award

violates public policy are not clearly defined in the AMA. In practice, Nigerian courts have been reluctant to interfere with arbitral awards on the grounds of public policy, preferring to narrowly construe this ground. However, in recent decisions of the Court of Appeal, arbitral awards that offend specific provisions of statutes have been set aside on the grounds of public policy.

- Status of the Award: A party may challenge the enforcement of an award on the ground that the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which the award was made. It is pertinent to note that the AMA allows a mechanism known as the Award Review Tribunal (ART). Under Section 56 (6) of the AMA, an ART constituted in the same way as the tribunal in the original arbitration can be convened and, within 60 days, can either uphold or set aside an arbitral award. This provision is only applicable if parties expressly provide in their arbitration agreement that awards can be reviewed by an ART. It is noteworthy that enforcement proceedings must be stayed during an ART review, so any enforcement proceedings may be challenged on the ground that the award is undergoing review by the ART.
- Issues of Limitation: The challenging party can also argue that enforcement of the award is barred by limitation. This means that the time for bringing an action to enforce the award has lapsed.

A party may appeal to a higher court, in this case the court of appeal, against a decision recognising and enforcing an arbitral award. The appeal process is distinct from the process of recognising and enforcing the arbitral award at the High Court before which the judgment is first sought to be recognised and enforced. Where the High Court has made a final order recognising the award, the judgment debtor may thereafter appeal to the court of appeal seeking to set aside the order of the High Court.

Trends and Developments

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Streamsowers & Köhn

Streamsowers & Köhn is a reputable full-service law firm with more than 50 skilled lawyers. Its head office is in Lagos, with branch offices in Abuja and Port Harcourt, Nigeria. The firm specialises in various practice areas, including arbitration, aviation, banking, insurance and intellectual property. Leveraging its intellectual capabilities, managerial expertise, technological proficiency and extensive networks, Streamsowers & Köhn provides valuable legal services to a diverse clientele. Recent highlights include representing Teleglobe America Inc in enforcing a foreign judgment obtained from the County Court of Fairfax, Virginia, in which the court of appeal recognised the foreign judgment as being registrable in Nigeria, treating it as a judgment of the superior court based on the judgment's satisfaction of the provisions outlined in the Foreign Judgment (Reciprocal Enforcement) Act.

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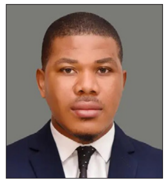

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Legal Framework, Challenges, and Prospects for the Enforcement of Judgments Through Sequestration in Nigeria

Introduction

The enforcement of court judgments is one of the cornerstones of the rule of law. Without effective enforcement mechanisms, court judgments risk becoming mere pronouncements devoid of practical significance. A successful party ought to reap the fruits of the judgment in his favour. Nigerian law, as with other common law jurisdictions, provides mechanisms through which judgments may be enforced for successful parties to enjoy the fruits of litigation.

While a variety of enforcement mechanisms exist in Nigeria, such as writ of fieri facias, garnishee proceedings, judgment summons and committal orders, a writ of sequestration occupies a peculiar niche as it becomes only significant where a judgment debtor who has had an order or warrant of arrest, commitment or imprisonment made against him cannot be found, or where a person is taken and detained in custody without obeying the judgment of a court.

This article discusses the legal framework, procedural dimensions and challenges for the enforcement of court judgments through sequestration in Nigeria, and explores comparative practices in the United Kingdom.

Conceptual basis

Sequestration may be described as a judicial process by which a property is placed in the custody of the court for purposes of enforcing compliance with a judgment or order. Historically, it developed in close relation to contempt jurisdiction, since the remedy was often used where a person had disobeyed an order of court and the court required a means of compelling obedience indirectly through property. Its effect is to suspend the debtor's free use of the relevant property while preserving its economic value for eventual satisfaction of the judgment or order.

It is instructive that sequestration may be at the beginning, during or at the end of a lawsuit. Pre-judgment sequestration (at the beginning and during a lawsuit) ensures that the property of the defendant remains available to satisfy a potential future judgment. It could also be used as security for costs in a lawsuit.

Post-judgment sequestration (at the end of a lawsuit) is important because it sits at the intersection of coercion and preservation. It is coercive because it pressures the debtor to obey; it is preservative because it prevents dissipation of assets that could satisfy the judgment. Unlike outright sale, sequestration does not necessarily dispose of the title immediately. Rather, it places the property under judicial management so that income or proceeds may be applied as the court directs. This makes it particularly suitable where the debtor's asset is income-producing, such as rented land, commercial premises, or other valuable property.

Statutory framework

The principal statutory framework for sequestration in Nigeria consists of:

- Sheriffs and Civil Process Act (SCPA), Laws of the Federation of Nigeria, 2004;
- Judgments (Enforcement) Rules (JER); and
- High Court rules of some states in Nigeria and the Federal High Court (Civil Procedure) Rules 2019.

These statutes and rules define the offices of sheriff and deputy sheriff, prescribe the forms of execution, regulate service and attachment procedures, and provide for writs such as fieri facias, delivery, possession, interim attachment, garnishee, judgment summons, arrest and imprisonment, and sequestration.

The JER is particularly important because it specifies the procedural mechanics of execution. It regulates when process may issue, how property is to be attached, the role of the bailiff and deputy sheriff, and the treatment of proceeds realised under execution. The Rules also make clear that a writ of sequestration may be issued by the High Court, and that it is not ordinarily issued from a magistrate's court.

Section 82 of the SCPA is the central statutory provision on sequestration. It provides in substance that where a person against whom an order or warrant of arrest, commitment, or imprisonment has been issued cannot be found, or has been detained in custody without obeying the judgment, the court may order a writ of sequestration to be issued against that person's property. This makes sequestration a remedy of last resort in that context, but also a useful alternative where personal coercion has failed or is unavailable.

While the statutes provide for the substantive framework for sequestration, the procedural guidelines are contained in the various rules issued by the heads of court to guide the practice and procedure of court in respect of proceedings brought before the courts, including sequestration. For instance, Order 5 of the Federal High Court (Civil Procedure) Rules, 2019 provides a procedural guideline for applying and obtaining orders of sequestration at the Federal High Court. Similar provisions are contained in some Rules of Court in various states.

The broader statutory scheme shows that sequestration is not isolated from other modes of enforcement. Rather, it is one of several tools the court may deploy according to the nature of the judgment and the circumstances of disobedience.

Procedure and operation

The procedure and operation of sequestration under Order XI Rules 8 and 9 of the JER reveal a carefully structured, court-controlled process designed to both compel obedience to court orders and preserve the assets of a recalcitrant judgment debtor. These provisions outline not only the steps required to initiate sequestration but also the mechanics of its execution and the legal consequences that follow.

The procedure commences with an application to a Judge, as mandated by Order XI Rule 8 and the various rules of court. In other words, the judgment creditor must approach the court by a formal application, typically supported by affidavit evidence, demonstrating the existence of a valid judgment or order, service of that order on the judgment debtor, and persistent non-compliance or contempt. By Order 36 of the Federal High Court Rules, the application for leave to issue a writ of sequestration is required to be made to the judge on notice to the other party.

Upon being satisfied that the circumstances warrant such relief, the court grants the application and orders the issuance of a writ of sequestration in the prescribed Form 69. The issuance of the writ marks the transition from adjudication to execution. However, unlike other writs of execution that are directed to sheriffs or bailiffs, a writ of sequestration is directed to two or more commissioners appointed by the court, as provided under Order XI Rule 9.

The operational phase of sequestration begins with the commissioners being commanded and empowered to enter upon all immovable property of the judgment debtor. This power of entry is extensive and authorises the commissioners to take possession and control of land and buildings belonging to the debtor. In addition to taking possession, they are also empowered to collect rents, profits, and all income accruing from such immovable property. This aspect of the process demonstrates that sequestration is not merely preservative but also revenue-generating, ensuring that the economic value of the property is harnessed during the period of enforcement.

Beyond immovable property, the commissioners are further authorised to seize and take control of all movable properties and goods belonging to the judgment debtor. This includes chattels, personal effects, and other tangible assets.

A defining feature of the operation of sequestration is that the commissioners are required to detain and keep the seized assets under sequestration, rather than immediately disposing of them. The property is held in custody "until the debtor clears his contempt or the court makes an order to the contrary". This entails the fundamentally coercive and in personam nature of sequestration. The objective is not simply to satisfy the judgment debt through liquidation but to exert pressure on the debtor to comply with the court's orders. In this sense, sequestration operates as a tool of judicial compulsion, particularly in cases involving disobedience or contempt.

Duty of court officer during sequestration

During the subsistence of sequestration, the commissioners appointed by the court act as officers of the court and are responsible for the proper management and preservation of the seized assets. Their functions are fiduciary in nature, requiring them to act in good faith and in accordance with the directives of the court. The court retains continuous supervisory jurisdiction over the process and may issue further orders regulating the management, use, or eventual disposition of the property.

Order XI Rule 9 of the JER also provides for the application of proceeds derived from the sequestrated property. The court may direct that all costs and expenses incurred in the execution of the writ, including administrative expenses and the remuneration of the commissioners, be paid out of the proceeds of the sequestration. The commissioners are entitled to "such reasonable remuneration as the court may allow", thereby ensuring that their services are compensated while also subjecting such compensation to judicial scrutiny.

Furthermore, the JER incorporates, by reference, the provisions governing attachment of property under a decree for money, to the extent that they are applicable. This incorporation is significant because it aligns sequestration with the broader framework of enforcement procedure. It ensures that established principles relating to valuation, custody, protection of assets, and safeguards against wrongful execution are equally applicable in sequestration proceedings. Thus, while sequestration is unique in its coercive orientation, it is not procedurally isolated from other enforcement mechanisms.

The primary basis for discharge is the purging of contempt or compliance with the court order by the judgment debtor. Once the judgment debtor obeys the order, the rationale for sequestration ceases, and the court may direct the release of the property. Alternatively, the court may make any other order it deems appropriate, including conversion of the sequestration into another form of execution or partial discharge where justice so requires.

In practical terms, the procedure and operation of sequestration make it a powerful but carefully regulated remedy. It operates at the intersection of enforcement and contempt jurisdiction, providing the court with a mechanism to compel obedience while simultaneously preserving the economic value of the debtor's estate. Its effectiveness lies not in immediate asset liquidation but in sustained pressure on the judgment debtor through the deprivation of control over property and income.

Nigerian judicial approach

Nigerian courts acknowledge sequestration as a valid mode of enforcing judgments, as it is expressly provided for under the JER and listed among recognised enforcement mechanisms alongside garnishee proceedings, writs of fieri facias, and committal processes. See the case of *Govt. of Gongola State v Tukur* (1989) 4 NWLR (Pt.117) 592.

The Court, in the cases of *Incorporated Trustees of Algon v Riok (Nig) Ltd & Ors*. (2018) LPELR-45289 (CA) and *APC & Anor v Moses & Ors* (2020) LPELR-52700 (CA), identified the various categories of judgment that may be enforced through sequestration:

- a judgment/order for payment of money;
- a judgment for possession of land;
- a judgment for delivery of goods; and
- a judgment ordering or restraining the doing of an act (this kind of judgment may be enforced by a writ of sequestration against the property of the disobedient person).

In practice however, litigants have shown a clear preference for garnishee proceedings in enforcing monetary judgments and attachment processes for tangible assets.

Besides sequestration being used as a mode for enforcement of judgment, it must be stated that it could also be used as a means of attaching a property pending the determination of an action. In the case of *SPDC-West Multipurpose Co-operative Society v UBA Plc* (2017) LPELR-50091 (CA) (SPDC Case), the Court defined sequestration as a court-ordered deposit of a property by removing the property from the possessor, usually the defendant or any person in the possession of the defendant's property, pending the outcome of a dispute in Court in which two or more parties contend for it. The SPDC case is an interlocutory appeal against the decision of the Federal High Court where an ex parte order of mareva injunction against the appellant as well as a sequestration order toward the liquidation of the appellant's business was granted. The order was granted in the interim pending the outcome of the Court's judgment in the case. The appellant appealed the order of the court but the appellate Court dismissed the appeal.

Challenges

Despite its doctrinal legitimacy, sequestration faces serious practical obstacles in Nigeria. The first is underuse. Many lawyers are more familiar with garnishee proceedings and fieri facias and therefore do not consider sequestration as a first-line enforcement strategy. A review of decided cases would show that while there are many judicial authorities on garnishee proceedings and fieri facias, there are limited decided cases on sequestration.

The second challenge is weak enforcement infrastructure. Sequestration requires trained bailiffs, active supervision by the deputy sheriff, accurate records, and a system for taking possession and accounting for income. The enforcement department in many courts is overburdened, under-resourced, and sometimes delayed by administrative bottlenecks. The result is that even a procedurally sound writ may face serious implementation difficulties.

The third challenge is asset opacity. Nigerian land administration, beneficial ownership structures, and property registration systems are still imperfect. Where ownership is disputed or hidden behind corporate vehicles, sequestration becomes difficult to plan and even harder to execute. The remedy works best when property is easily identifiable and income streams are traceable. Without good registries and reliable title information, sequestration loses much of its practical force.

The fourth challenge concerns due process and proportionality. Because sequestration interferes with proprietary interests, the court must ensure that notice requirements are satisfied and that the remedy is not used oppressively. The risk of abuse is particularly acute where enforcement is pursued in a punitive or retaliatory manner rather than strictly for compliance. The possibility of overreach means that courts must scrutinise applications carefully and ensure that the remedy remains proportionate to the objective sought.

A fifth issue is the tension between enforcement and public administration. In some contexts, especially where public funds or public officers are involved, enforcement processes may be constrained by statutory requirements that are intended to protect public administration. This has been particularly evident in garnishee law, but the same broader concern informs coercive execution generally. The implication is that sequestration may be doctrinally available but practically constrained by public law sensitivities.

Comparative analysis – United Kingdom

Compared with Nigeria, some jurisdictions have enhanced the application of sequestration for the enforcement of judgments. One such jurisdiction is the United Kingdom (UK) where sequestration is a well-developed and doctrinally refined method of enforcing judgments. In the UK, sequestration is governed primarily by the Civil Procedure Rules (CPR), particularly Part 83. A writ of sequestration is expressly recognised as a writ of execution used to enforce compliance where a party has failed to obey a court order, especially orders requiring the performance or restraint of an act.

The UK framework makes a clear distinction between sequestration as an enforcement mechanism and sequestration as a sanction for contempt, thereby giving the remedy doctrinal clarity. See CPRs 70, 81.9, 83.13 and 83.14. The UK approach is supported by developed procedural rules and case law, ensuring that its scope, conditions, and limitations are clearly understood within the enforcement regime.

The procedural rules relating to writs of sequestration to enforce a judgment or order are contained in CPR 83. A judgment creditor must first obtain leave (permission) of the court by filing an application supported by affidavit evidence, after which the application must be personally served on the respondent. Once leave is granted, a request is made for the issuance of the writ, which becomes effective when it is sealed by a court officer. The sequestrators (enforcement officers) are then empowered to enter the debtor's property, take possession of both real and personal estate, collect rents and profits, and retain the assets until compliance is secured. The strict adherence to procedural requirements is emphasised by judicial authority, for instance, in *Raja v Nicholas van Hoogstraten* [2007] EWHC 1743 (Ch), where an irregularity may result in the order being set aside.

Furthermore, UK case law has played a significant role in clarifying the scope and flexibility of sequestration. In *Trafigura Pte Ltd v Emirates General Petroleum Corp* (*EMARAT*) [2010] EWHC 3007 (Comm), the High Court affirmed that a writ of sequestration may be granted even where there is no evidence of assets within the jurisdiction and the claimant does not need to show that the defendant has property that can be seized under a sequestration. Similarly, in *Touton Far East PTE Ltd v Shri Lal Mahal Ltd* [2017] EWHC 621 (Comm), the court indicated that sequestration may extend to assets located outside the jurisdiction. Earlier authority such as *Rose v Laskington* [1990] 1 QB 562 also confirms that sequestration may be invoked even in lower courts (such as the county court) in certain situations.

Notwithstanding this advanced framework, sequestration in the UK remains a severe and exceptional remedy, and is therefore rarely used in practice, particularly for enforcing monetary judgments. Courts typically prefer more efficient mechanisms such as third-party debt orders and writs of control, reserving sequestration for instances of serious or persistent non-compliance.

Conclusion

Sequestration remains a legitimate and potentially viable mechanism for enforcing judgments in Nigeria. Its enduring value lies in its ability to place economic pressure on a debtor while preserving property value under judicial control. In doctrinal terms, it is firmly embedded in the Nigerian enforcement framework. In practical terms, it is underused and requires adequate knowledge for proper utilisation.