Dispute Resolution
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CAN A GARNISHEE ORDER ABSOLUTE BE STAYED?

Introduction

Generally, litigation commences with an originating process and ends with a judgment. With judgment therefore comes execution, bringing the case to a close. Since it is in the interest of justice that a successful litigant should enjoy the reward of a well-fought legal battle, a judgment debtor who would like the court to stay the execution of a judgment must show special and exceptional circumstances why the execution of such judgment should be stayed.[2]

The execution of judgments can be accomplished through various modes, one of which is through garnishee proceedings, a popular mechanism for the enforcement of monetary judgments. The garnishee process is initiated by the judgment creditor obtaining an order nisi from the court via an ex-parte application.[3] Subsequently, the court issues a summons requiring the garnishee to demonstrate why the order nisi should not be confirmed.[4] If the garnishee successfully shows cause, the order nisi is discharged. Conversely, if the garnishee fails to provide sufficient cause, the order nisi is made absolute.[5]

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2 Vaswani Trading Co. Ltd v. Savalakh (1972) LPELR-3460 (SC).
3 Section 83(1), Sheriffs and Civil Process Act 1945.
4 The word *'nisi'* is a Norman word which means 'unless' in English. An order *nisi* therefore means that the order would be made absolute unless the garnishee is able to show cause why the order should not be made absolute.
5 Skye Bank v. GTB (2020) LPELR-50529(CA); FCMB v. Dekina & Ors. (2020) LPELR-54135 (CA).

Staying of Garnishee Orders Absolute

Upon the grant of a garnishee order absolute, the sum of money standing to the credit of the judgment debtor with the garnishee is then attached in satisfaction of the judgment. At this stage, it is common for judgment debtors to file an application for a stay of execution against the order absolute.

There have been several pronouncements by the Supreme Court and the lower courts on the propriety of applications seeking to stay a garnishee order absolute. In 2005, the Supreme Court in ***Union Bank of Nigeria Plc v Boney Marcus Ind. Ltd & Ors("Boney's case")***,[6] held that a garnishee order absolute is a final decision of the court which leaves nothing to be judicially determined, and cannot therefore be brought back to the court itself for further adjudication as the court has become functus officio.[7] Essentially, the Supreme Court in ***Boney's case*** held that a garnishee order absolute on the ground that a final decision of court leaves nothing to be judicially determined; thus suggesting that once an order of garnishee absolute is declared, the judgment is deemed executed.

While it is clear that the trial court cannot sit on appeal over its decision and that an order absolute leaves nothing to be determined by the court which granted it, does this also rob the court of the *vires* to stay the execution of such order? In ***Zenith Bank Plc v Chief Arthur John & Ors ("John's case")***,[8] the Supreme Court unanimously dismissed the appellants' application for a stay of execution against a garnishee order absolute. Relying on the ***Boney's case***, the Court reiterated its earlier decision and unanimously held that a garnishee order absolute means an executed judgment; a completed act, and that a stay of execution cannot proceed against a completed event. The court went further to state that the moment a garnishee order is made absolute, the money becomes wholly attached. The Court held:

> "The underlying principle that must inform our decision in this matter is that an injunction or stay does not proceed against a completed event. The order the applicant herein seeks to stay is a Garnishee Order Absolute which by its very tenor denotes that execution has already been levied against the property to which the order being sought relates. The money, with the Garnishee Order being made absolute, becomes wholly attached. Learned counsel for the respondents cannot be faulted in this regard. See Union Bank of Nig. Plc v. Boney

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6 [2005] 13 NWLR (Pt. 943) 654-665.
7 Note 5, pp. 664-665; paras H-F.
8 [2015] NWLR (Pt. 1458) 393; (2015) LPELR-24315 (SC).

> Marcus Ind. Ltd. & Ors (2005) LPELR 3394, (2005) 13 NWLR (Pt. 943) 654."[9]

At page 425, Onnoghen J.S.C stated:

> "It is settled law that once an execution is completed you cannot order a stay of execution of the judgment already executed. To ask for stay of execution of an executed judgment is like offering a dead man medicine intended to cure his ailment. Put another way, closing the stable after the horse had bolted. Such a request is not grantable by a court of law which does nothing in vain."

However, in the following paragraph, Onnoghen J.S.C seems to acknowledge the distinction between a mere declaration of a garnishee order absolute and when the order has indeed become executed, i.e., the money has been transferred to the judgment creditor.

> "In a situation where execution had been levied, the proper application is for an order of court setting aside the writ of attachment or execution if actual execution had not been carried out. The same principle applies to an order of injunction, either interim, interlocutory or perpetual. It cannot be granted to restrain the carrying out of an already completed act." [Emphasis mine]

In 2021, the Supreme Court had cause to revisit this question in the case of ***Sani v Kogi State House of Assembly & Ors ("Sani's case")***.[10] Before delving into this case, a look at the peculiar circumstances in the ***John's case*** is helpful. In ***John's case***, the apex court noted that there was no appeal against the order absolute—a condition precedent to an application for stay of execution—and that the appellants only raised the issue at the Supreme Court. Besides, the order absolute had in fact been executed, i.e., the attached deposit in the garnishee's account had been used to execute the judgment! Thus, it is conceivable that if the appellants had appealed the order absolute and if the actual execution had not taken place, the trial court or the Court of Appeal may have granted a stay against the order in ***Sani's case***, the Supreme Court upheld the decision of the Court of Appeal which stayed the execution of the garnishee order absolute made by the trial court on the ground that the grant of a garnishee order absolute does not equate that the judgment has been executed; that is, the execution only ends when the judgment sum is finally paid to the judgment creditor. Thus, the judgment is only deemed executed when the judgment sum is finally paid to the judgment creditor.

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9 Ibid, pp. 426-427, paras. H-B.
10 (2021) LPELR-53067 (SC).

By this reasoning, the Supreme Court has cleared any misgiving as to execution of a judgment can be said to have been completed and that the declaration of a garnishee order absolute would not be deemed to connote that the judgment has been executed, as suggested in the ***Boney's case.***

Under Nigerian law, particularly under the principle of judicial precedent or stare decisis, except where the court is able to distinguish the extant case from a precedent, lower courts were faced with conflicting decisions of the Supreme must follow the latter decision. In ***Cyril Osakue v Federal College of Education, Asaba***,[11] the Supreme Court reiterated the principle of judicial precedent in the following words:

> "I wish to stress the fact that in the hierarchy of the courts, where there are conflicting judgments, the Court of Appeal is bound by the latter or last decision of this court. It has no choice however brilliant and knowledgeable the justices of that court may think or hold that they are more than this court."[12]

Conclusion

Going by this latter-decision rule, the decision in ***Sani's case*** has therefore modified the position of the law with regards to stay of execution of garnishee orders absolute. First, against the earlier position that the declaration of a garnishee order absolute marks the completion of the execution, the court extends the completion of execution of a monetary judgment to when the judgment creditor receives the money. Altogether, it should not be taken that an order of stay of execution will be granted as a matter of course upon the filing of an appeal. As laid down in ***Vaswani Trading Co. Ltd v Savalakh***,[13] a stay of execution is a discretionary relief, granted only where the applicant has shown special and exceptional circumstances for the grant, and where the applicant has shown that the balance of convenience is on his side and that he has a high chance of success with the appeal. Otherwise, the mere filing of an appeal will not operate to stay or frustrate a subsisting order of a court of law.

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11 [2010] 10 NWLR (Pt. 1201) 1.
12 Ibid, per Ogbuagu JSC at pp. 29-30.
13 (1972) LPELR-3460 (SC).