

THE ROLE OF A GARNISHEE: NAVIGATING FROM THE DUTY TO OBSERVE TO THE RIGHT TO PARTICIPATE IN A GARNISHEE PROCEEDING

Dispute Resolution Insights



P a g e s	C O N T E N T S
2	Introduction
2	The Role of the Garnishee in a Garnishee Proceeding
4	The Garnishee's Right to Participate in Garnishee Proceedings
6	Conclusion



1. Introduction

A garnishee proceeding is a post-judgment Court proceeding initiated specifically to enforce a monetary judgment obtained by the successful party, known as the judgment creditor, against the judgment debtor in the original action. A judgment creditor who has obtained a monetary judgment against the judgment debtor initiates this proceeding to compel a named third party, who is in possession of funds belonging to the judgment debtor, to pay over the sum in its possession in satisfaction of the judgment.

The garnishee proceeding evolves from a two-party proceeding in the original action — that is, between the Plaintiff and the Defendant — into a three-party proceeding, involving third parties, usually Banks, which are referred to as the garnishees - albeit the principal parties in the proceeding are the judgment creditor and the garnishees. This type of proceeding has been determined to be separate and distinct from the original action culminating in the judgment during which two types of orders are made – that is, a garnishee order nisi and a garnishee order absolute.

2. The Role of the Garnishee in a Garnishee Proceeding

The garnishees are necessary parties to the proceedings because they are presented by the judgment creditor in its motion *ex-parte* for a garnishee order *nisi* to the Court as third parties whom the judgment creditor reasonably believes have funds belonging to the judgment debtor in their possession, which may be applied to satisfy the monetary judgment obtained by the judgment creditor in the original action. Since the garnishees (usually Banks) are in a debtor-creditor relationship with their customers in the banking process, they are usually notified as debtors of their customers, who are judgment debtors, to attach such debts owed to the judgment debtor customers to satisfy the monetary judgment. It is useful to clarify that garnishees are not necessarily banks. They are any person who is in possession of funds standing to the credit of a judgment debtor which may be used to satisfy the judgment debt.



A garnishee order *nisi*, when made, brings the garnishee into the garnishee proceeding. By **section 85 of the Sheriffs and Civil Process Act**, a garnishee order nisi binds a debtor of the judgment debtor to attach such debts due to the judgment debtor to satisfy the monetary judgment of the judgment creditor. As such, all that is required is that notice of such order of the Court attaching the funds should be given to the garnishee.

The garnishee order *nisi* usually includes an order that the garnishee file an affidavit to show cause, within the stated period, stating why the judgment debtor's funds in their possession should not be attached and paid to the judgment creditor. This is the point at which the controversies surrounding the role of a garnishee arise.

The law is settled that the role of a garnishee is limited to complying with the garnishee order *nisi* by filing the affidavit to show cause. This affidavit usually indicates that, the judgment debtor does or does not have funds in its possession which may be attached or that such funds in its possession are subject to the garnishee's right of lien – in a case where the judgment debtor also has debt obligations to the garnishee in a credit facility transaction. This is usually referred to as the **duty of a garnishee to observe**. An order of the Court either discharging the garnishee from the garnishee proceeding or making the garnishee order *nisi* absolute – which mandates the garnishee to pay the debt to the Judgment creditor – would depend on the content of the affidavit of the garnishee. In context, a garnishee observes when it simply complies with the garnishee order *nisi*, without more, in anticipation of the subsequent order of the Court either discharging it or making the garnishee order *nisi* absolute against such funds. A garnishee — regarded as a neutral party in the garnishee proceeding — cannot assume the role of advocate for the judgment debtor and is usually expected to merely comply with the order nisi and not fight the cause of the judgment debtor to prevent the payment of the judgment debtor's funds in its possession.



The garnishee takes on the role of an advocate when it fights for a judgment debtor who either accepts the judgment against him and does nothing about it, or who may be indolent to right his cause even if the funds attached exceed the Judgment sum. See ***GTB v. Innoson Nigeria Ltd (2017) LPELR-42368(SC) Per EJEMBI EKO, JSC (Pp 19 - 20 Paras F-D)*** in which case the garnishee applied for leave to adduce fresh evidence to enable it appeal against a judgment to which it was not a party and against which the parties did not appeal. In that case, a garnishee will be regarded as a busybody or 'meddlesome interloper' dabbling in a matter that does not concern it and/ or affect its interest since the funds to be attached and eventually paid over to the judgment creditor are debts due to the judgment debtor. As such, the important factor as held by the Courts is that a garnishee does not have the right to participate in the garnishee proceeding by challenging the proceeding when the judgment debtor has accepted the judgment debt or does not challenge it. Similarly, in ***CBN v. Interstella Communications Ltd & 3 Ors (2017) LPELR-43940(SC)***, the Supreme Court, per Ogunbiyi JSC determined that:

“It is not envisaged after a judgment creditor has gone through the rigours to establish his rights through the legal system, that the garnishee, who is asked to surrender the judgment debtor's money in its possession should engage the judgment creditor in another bout of legal battle”.

It may be worth noting that ***CBN v Interstella [Supra]*** decision is based on an indebtedness that is not disputed by the judgment debtor but endorsed by a consent judgment based on which payment had been made in part.

3. The Garnishee's Right to Participate in Garnishee Proceedings

Before interrogating the right to participate, it is imperative to avoid mistaking the emphasis of the Supreme Court on the duty of the garnishee



not to interfere in an accepted judgment debt, to mean that the garnishee can challenge the judgment debt too if disputed. A garnishee cannot do so. A garnishee cannot challenge the validity of the judgment, and the debt determined in the original action in a garnishee proceeding for its enforcement. Even the Court conducting the garnishee proceeding lacks the jurisdictional competence to re-open the original action to review the debt or validity of the judgment being enforced. See *Oboh & Anor v. Nigeria Football League Ltd & Ors (2022) LPELR-56867(SC) Per MOHAMMED LAWAL GARBA, JSC (Pp 59 - 59 Paras B - E)*.

The question, therefore, is this: Does a garnishee have a **right to participate** in the garnishee proceeding? The answer to the above poser is positive based on settled law. For context, the right to participate in the garnishee proceeding means the right to file contentious applications in the garnishee proceedings. The right of a garnishee to participate in a garnishee proceeding — as shown in the cases cited above — is not proscribed but delimited.

The Court of Appeal considered the right of a garnishee to participate by applying to set aside a garnishee order nisi obtained in a garnishee proceeding in *CBN v Igbadoo (2017) LPELR-44591(CA)*. In the appeal, the garnishee raised an objection to the jurisdiction of the Court conducting the garnishee proceeding, the objection of the garnishee was dismissed.

The garnishee raised lack of jurisdiction of the National Industrial Court to preside over the CBN (a garnishee) in a garnishee proceeding in violation of *section 251(1) (d) of the 1999 Constitution (as amended)* and for failure of the Judgment creditor to satisfy a condition precedent for enforcing a monetary judgment against the funds of a public institution by obtaining the consent of the Attorney General of the Federation in accordance with *section 84 of the Sheriffs and Civil Process Act*.

On appeal, the Court of Appeal, in allowing CBN's appeal, held that the lower Court must first have jurisdiction over the garnishee before it can



exercise inherent powers to enforce the judgment by garnishee proceedings against a garnishee which was lacking in that case. The Court of Appeal also held that jurisdiction ***“being so fundamental it can be raised at any stage by any of the parties by any means or even by the Court suo motu. If the Court can suo motu raise the issue of jurisdiction how much more a party to the suit including the garnishee in a garnishee proceeding”***. It is important to note that the decision of the Court of Appeal, in this case, referred to the decision of the Supreme Court in ***GTB v. Innoson Nigeria Ltd [Supra]*** and the circumstances are not the same as in ***GTB v. Innoson Nigeria Ltd [Supra]*** and ***CBN v Interstella [Supra]***.

4. Conclusion

The decision of the Court of Appeal in ***CBN v Igbadoo (Supra)*** recognised that the participation of the garnishee in a garnishee proceeding goes beyond merely filing an Affidavit to show cause. By this decision, a garnishee is empowered to challenge jurisdictional competence of the Court.

In other words, the role of a garnishee which was delimited and/or restricted as shown in the Supreme Court decisions above has now been further expatiated on by the Court of Appeal to include the right of the garnishee to participate in a garnishee proceeding by objecting to the jurisdiction of the Court conducting the proceeding where it is lacking.



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