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**Sheriffs and Civil Process Act**  
**Chapter 407**  
**Laws of the Federation of Nigeria 1990**

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## Sheriffs and Civil Process Act

### Chapter 407

### Laws of the Federation of Nigeria 1990

An Act to make provision for the appointment and duties of sheriffs, the enforcement of judgements and orders, and the service and execution of civil process of the Courts throughout Nigeria.

*1<sup>st</sup> day of June 1945*

### Part I

#### Short Title

1. (1) This Act may be cited as the Sheriffs and Civil Process Act.

### Part II

#### Interpretation

##### *Interpretation*

2. In this Part, unless the context otherwise requires- "court" includes a High Court and a magistrate's court; "process" has the meaning assigned to it in section 19 of this Act.

##### *Sheriff and Deputy Sheriffs*

3. There shall be appointed for each State of the Federation and the Federal Capital Territory, Abuja, a fit and proper person to be the Sheriff for the State or for the Federal Capital Territory, Abuja.
4. There shall be appointed for each State of the Federation and the Federal Capital Territory, Abuja, a fit and proper person to be the Deputy Sheriff who shall be subject

to the general control and direction of the Sheriff.

5. The sheriffs may appoint such number of persons as bailiffs as may be necessary.
6. Every bailiff and every other person who has authority to intermeddle with the execution of writs issued by any court of record, shall before he does so make a declaration, which shall be exempt from stamp duty, in the form in the First Schedule to this Act, or to the like effect, before any judge or magistrate for the division or district in which he exercises such authority.

*Powers, Duties and Liabilities of Sheriff, Deputy Sheriffs, Bailiffs and Police Officers*

7. The sheriff may command any person to arrest any person who has committed or is suspected of having committed a felony, and any person failing to obey such command shall on conviction be liable to a fine of two hundred naira or to imprisonment for one year or to both such fine and such imprisonment.
8. The sheriff shall receive writs and process of a court issued in accordance with this Act and shall be charged with making returns thereto.
9. At the sessions the sheriff shall direct a sufficient number of police constables to be employed to keep order in and within the precincts of the court.
10. The sheriff at the request of a person delivering a writ to him for execution shall give a receipt for that writ stating the hour and the day of its delivery.
11. The sheriff shall perform any other duty or duties as may be imposed upon him by any written law.
12. Where sentence of death has been pronounced upon any person and the President or Governor, as the case may be, has ordered that the sentence shall be carried into execution, the same shall be carried into execution by the sheriff or a deputy sheriff or by some person appointed by the sheriff or deputy sheriff:  
  
Provided that if it appears to the President in the case of the Federal Capital Territory, Abuja or to the Governor in charge of a State that the attendance of the sheriff or a deputy sheriff at the place at which the execution is to be carried out cannot be obtained without undue delay or inconvenience, the President or Governor may detail any other officer in the Territory or in the State, as the case may be, to perform the duties of the sheriff in relation to such execution.
13. Every deputy sheriff may be charged generally with the duties of performance of the sheriff and shall be subject to the same liabilities and protection as the sheriff.
14. A person unlawfully imprisoned by the sheriff, deputy sheriff or any bailiff appointed by the sheriff shall have an action against such sheriff, deputy sheriff or bailiff, as the case may be, in like manner as against any other person that should imprison him without warrant.
15. It shall be the duty of every police officer to assist in the execution of process of the court.

*Protection of Sheriffs*

16. Where any goods in the possession of a judgment debtor at the time of seizure by a sheriff, or deputy sheriff, or other officer charged with the enforcement of a writ, warrant, or other process of execution, are sold by such sheriff, deputy sheriff or other officer, without any claim having been made to the same-
- (a) the purchaser of the goods so sold shall acquire a good title to those goods; and
  - (b) no person shall be entitled to recover against the sheriff, deputy sheriff or other officer or anyone lawfully acting under the authority of either of them, for any sale of such goods, or for paying over the proceeds thereof prior to the receipt of a claim to the said goods, unless it is proved that the person from whom recovery is sought had notice or might by making reasonable inquiry have ascertained that the goods were not the property of the judgment debtor:  
Provided that nothing in this section contained shall affect the right of any claimant who may prove that at the time of sale he had a title to any goods so seized and sold to any remedy to which he may be entitled against any person other than such sheriff, deputy sheriff, or other officer as aforesaid.
17. Neither the sheriff nor any deputy sheriff shall be liable to be sued for any act or omission of any police officer or other person in the execution of any process, which shall have been done or may have occurred either through disobedience or neglect of the orders or instructions given by the sheriff or a deputy sheriff.
18. All fees received by the sheriff, deputy sheriff or bailiff in respect of any duty performed by him in the discharge of his official duties shall be paid into and form part of the Consolidated Revenue Fund of the State or part of the Federation in respect of which the fee is prescribed.

### **Part III**

#### **Enforcement of judgements and orders**

##### *Execution and Committals*

19. (1) In this Part and Parts IV, V and VI, unless the context otherwise requires –
- "attached" includes distrained upon and seized;
  - "attachment" includes distress and seizure;
  - "court" includes the High Court and a magistrate's court;
  - "the High Court" means the High Court of the Federal Capital Territory Abuja or of the State.
  - "judge" means a judge of the High Court;
  - "judgment" includes "order";
  - "judgment creditor" means any person for the time being entitled to enforce a judgement;



"judgment debtor" means a person liable under a judgment;

"magistrates' court" means a magistrate's court established under a Federal law or any law of the State or under any law having effect as if it were a law of the State.

"order" includes an injunction, an order for the payment of the costs of any party, and an order for the payment of a counter-claim by a plaintiff;

"process" means a formal written authority addressed to the sheriff for the enforcement of a judgment in manner provided by this Act or prescribed, and includes writ of execution and warrant and order of arrest, commitment or imprisonment; "sheriff" includes deputy sheriff;

"writ of execution" includes writ of attachment and sale, writ of delivery, writ of possession and writ of sequestration.

(2) Nothing in this part or in Part IV, V or VI of this Act shall be construed to authorise the service or execution outside the State of the process of a court.

20. (1) Any sum of money payable under a judgment of a court may be recovered, in case of default or failure of payment thereof forthwith or at the time or times and in the manner thereby directed, by execution against the goods and chattels and the immovable property of the judgment debtor in accordance with the provisions of this Act.

(2) The registrar on the application of the judgment creditor shall cause to be issued a writ of attachment and sale whereby the sheriff shall be empowered to levy or cause to be levied by distress and sale of goods and chattels, wherever they may be found within the division or district of the court, the money payable under the judgment and the costs of the execution.

(3) The precise time of the making of an application to the registrar for the issue of a writ shall be entered by him in the book prescribed for the purpose and on the writ, and when more than one such writ is issued they shall be executed in the order of the times so entered.

21. (1) Where a court has made an order for payment of any sum of money by instalments, no writ of execution for the enforcement of the judgment shall be issued until after the default in payment of some instalment according to the order.

(2) On any such default, execution or successive executions may issue for the whole of the said sum of money and costs then remaining unpaid, or for such part thereof as the court may order, either at the time of making the original order or at any subsequent time.

22. (1) In or upon every writ of execution against the property of any person, the registrar shall cause to be inserted or endorsed the sum of money and costs adjudged, and the fees for the execution of the writ.

(2) If the judgement debtor, before the actual sale of the property, pays or causes to be paid or tendered to the registrar of the court from which the writ issued, or to the bailiff holding the writ, the sum of money and costs inserted or endorsed as aforesaid, or such part thereof as the judgment creditor agrees to accept in full satisfaction, together with the fees inserted or endorsed as aforesaid, the execution shall be superseded, and the property of the judgment debtor shall be discharged

and set at liberty.

23. If at any time upon an inquiry made on the application of the judgment debtor, wherein the onus of proof shall be upon him, it appears to the satisfaction of the court that the judgment debtor has made a full surrender and disclosure of his property in the prescribed manner, and that he is unable because of unavoidable misfortune to satisfy the judgment, and that he has not been guilty of any misconduct cognizable under section 66 of this Act, and that his property ought to be released from attachment, the court may, in its discretion, stay any writ of execution issued in the proceedings for such time and upon such terms as the court thinks fit, and so from time to time until it appears that the cause of inability has ceased.
24. For the purpose of executing a writ to give possession of any premises, it shall not be necessary to remove any goods or chattels from those premises.

*Seizure of Goods and Securities and Custody thereof*

25. Every sheriff or officer executing any writ of execution issued from a court against the goods or chattels of any person may by virtue thereof seize-
- (a) any of the goods and chattels of that person, except the wearing apparel and bedding of that person or his family and the tools and implements of his trade, to the value often naira, which shall to that extent be protected from seizure; and
  - (b) any money, bank notes, bills of exchange, promissory notes, bonds, specialities or securities for money belonging to that person.
26. Goods seized in execution under process of a court shall thereof-
- (a) be deposited by the bailiff in some fit place; or
  - (b) remain in the custody of a fit person approved by the sheriff to be put in possession by the bailiff; or
  - (c) be safeguarded in such other manner as the sheriff directs.
27. The sheriff shall hold any bills of exchange, promissory notes, bonds, specialities or other securities for money seized in execution under process of a court as security for the amount directed to be levied by the execution, or for so much thereof as has not been otherwise levied or raised, for the benefit of the judgment creditor, and the judgment creditor may sue in the name of the judgment debtor, or in the name of any person in whose name the judgment debtor might have sued, for the recovery of the sum secured or made payable thereby, when the time of payment thereof arrives.
28. If any person rescues or attempts to rescue any goods seized in execution under process of a court or in any other way resists or obstructs the execution of any process for the enforcement of a judgment of a court, he shall be liable, either on an order made in that behalf by the court from which the writ of execution or other process issues, or on summary conviction, to a fine not exceeding one hundred naira, and any bailiff of the court may take him into custody with or without warrant, and bring him before the court.

*Sale of Goods Seized*

29. (1) No goods seized in execution under process of a court shall be sold for the purpose of satisfying the writ of execution until the expiration of a period of at least five days next following the day on which the goods have been so seized unless-
- (a) the goods are of a perishable nature; or
  - (b) the person whose goods have been seized so requests in writing;
- Provided that the sheriff may, if he is unable from want of time to complete the sale, adjourn the same for a period of not more than three days, and so on as often as may be necessary:
- Provided further that the court may, if it thinks fit, direct that the sale shall be postponed for any time not exceeding twenty-eight days after the attachment.
- (2) In every case where the property attached is apparently over forty naira in value, it shall be set up for sale by the sheriff in the principal High Court or magistrate's court house of the division or district in which the attachment is made, and if the place where the attachment is made is not within eight kilometres of the court from which the writ of execution issued the judge or magistrate shall give such directions as he thinks fit:
- Provided that the judge or magistrate may, if he thinks fit, in any particular case direct the sale to be held at any other place in the district.
- (3) Every sale shall take place between the hours of seven o'clock in the morning and eight o'clock in the evening and everything set up for sale shall be knocked down to the highest bidder for ready money.
- (4) Notice of the day and hour of sale of any movable property, apparently over forty naira in value, attached, shall be published four days at least before the day of such sale, by being posted upon the door of the court house of the division or district in which the attachment is made and where the sale is to take place at some other place, then at that other place also, and if the court so directs in a newspaper published in Nigeria.
30. (1) Where any goods are to be sold under an execution for a sum exceeding forty naira, including legal incidental expenses, the sale shall, unless the court from which the writ of execution issued otherwise orders, be made by public auction and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on, and during three days next preceding, the day of sale.
- (2) Where any goods are seized in execution and the registrar has notice of another execution or other executions, the court shall not consider an application for leave to sell privately until the prescribed notice has been given to the other execution creditor or creditors, who may appear before the court and be heard on the application.
31. Where the property sold shall consist of goods, chattels, or other movable property in the possession of the judgment debtor, or to the immediate possession of which the judgment debtor is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.

32. When writs against the property of any person have been issued from more than one court, the right to the property attached shall be determined according to the order of priority of the respective times of application to the registrars for the issue of the writs.
33. (1) Where a claim is made to or in respect of any property attached in execution under process of a court, the claimant may-
- (a) deposit with the sheriff either-
    - (i) the amount of the value of the property claimed; or
    - (ii) the sum, if any, which the sheriff is allowed to charge as costs for keeping possession of the property until the decision of the court can be obtained on the claim; or
  - (b) give the sheriff in the prescribed manner security for the value of the property claimed.
- (2) For the purpose of this section the amount of the value of the property claimed shall in case of dispute be fixed by appraisalment and where that amount is deposited as aforesaid it shall be paid by the sheriff into court to abide the decision of the court upon the claim.
- (3) In default of the claimant complying with the foregoing provisions of this section, the sheriff shall sell the property as if no such claim had been made, and shall pay into court the proceeds of the sale to abide the decision of the court.

#### *Interpleader*

34. (1) If a claim is made to or in respect of any property attached in execution under process of a court, or in respect of the proceeds or value thereof, the registrar may, upon the application of the sheriff, as well before as after any action brought against him, issue a summons calling before the court the party at whose instance the process issued and the party making the claim.
- (2) Upon the issue of the summons, any action brought in any court in respect of the claim or of any damage arising out of the execution of the writ shall be stayed.
- (3) On the hearing of the summons, the court shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the sheriff upon any claim to damages arising or capable of arising out of the execution of the writ by the sheriff, and shall make such order in respect of any such claim and the costs of the proceedings as it thinks fit.

#### *Landlords' claims for Rents*

35. (1) The landlord of every premises in which any goods are seized may claim the rent of the premises in arrears at the date of the seizure, at any time within five days next following that date, or before the removal of the goods, by delivering to the bailiff or officer making the levy a claim in writing signed by himself or his agent,

- stating-
- (a) the amount of the rent claimed to be in arrears;
  - (b) the period in respect of which the rent is due.
- (2) Where such a claim is made, the bailiff or officer making the levy shall in addition thereto distrain for the claim ed and the cost of the distress, and shall not within five days next after the distress, sell any part of the goods seized, unless-
- (a) the goods are perishable nature; or
  - (b) the person whose goods have been seized so request in writing.
- (3) The bailiff shall afterwards sell under the execution and distress such of the goods as well satisfy-
- (a) first, the costs of and incidental to the sale;
  - (b) next, the claim of the landlord not exceeding-
    - (i) in a case where the tenement is let by the week, four weeks' rent; and
    - (ii) in a case where the tenement is let for any other term less than a year, the rent of two terms of payment,
    - (iii) in any other case, one year's rent; and
  - (c) lastly, the amount for which the writ of execution issued.
- (4) If any replevin is made of the goods seized the bailiff shall nevertheless sell such portion thereof as will satisfy the costs of and incidental to the sale under the execution and the amount for which the writ of execution issued.
- (5) In any event the surplus of the sale, if any, and the residue of the goods shall be returned to the judgment debtor.
- (6) The fees of the court and bailiff for keeping possession and sale under any such distress shall be the same as would have been payable if the distress had been an execution of the court, and no other fees shall be demanded or taken in respect thereof.

#### *Lien*

- 36.** Where the property sold consists of movable property to which the judgment debtor is entitled, subject to a lien or right of any person to the immediate possession thereof, the delivery to the purchaser shall, as far as practicable, be made by the sheriff giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser thereof.
- 37. (1)** Where a writ of execution has been issued from a court, hereafter in this section referred to as a "home court", against the property of any person and the property or any of it is out of the local division or district of that court, the registrar of that court may send the writ of execution to the registrar of any other court within the jurisdiction of which the property is or is believed to be, with a warrant thereon

endorsed or thereto annexed requiring execution of the original writ.

- (2) On the receipt of the warrant, the registrar of the other court shall act in all respects as if the original writ of execution had been issued by the court of which he is registrar and shall within the prescribed time-
  - (a) report to the registrar of the home court what he has done in the execution of the writ; and
  - (b) pay over all moneys received in pursuance of the writ.
- (3) Where a writ of execution is sent by the registrar of a home court to the registrar of another court for execution under the provisions of this section, the judge or magistrate of that court, as the case may be, shall have the same power as the judge or magistrate of the home court of staying the execution under section 23 of this Act as respects any property within the jurisdiction of that other court.

#### *Committals*

38. (1) Whenever any order or warrant for the committal of any person to prison is made or issued by a court, whether in pursuance of this or any other Act or Law or of Rules of Court made under this Act, the order or warrant shall be directed to the sheriff, who shall thereby be empowered to take the body of the person against whom the order is made or warrant issued, and deliver him to the officer in charge of the prison mentioned in the order or warrant.
  - (2) The officer in charge of the prison mentioned in any such order or warrant shall be bound to receive and keep the person therein mentioned until he is lawfully discharged.
39. (1) Where any order or warrant for the committal of any person to prison has been made or issued, whether in pursuance of this or any other Act or Law or of Rules of Court made under this Act, by a court hereafter in this section referred to as a "home court", and that person is out of the division or district of that court, the registrar may send the order or warrant to the registrar of any other court within the division or district of which that person is or is believed to be, with a warrant thereon endorsed or thereto annexed requiring execution of the original order or warrant.
  - (2) On receipt of the warrant, the registrar of the other court shall act in all respects as if the original order or warrant had been issued by the court of which he is registrar and shall within the prescribed time-
    - (a) report to the registrar of the home court what he has done in the execution of the order or warrant; and
    - (b) pay over all moneys received in pursuance of the order or warrant.
  - (3) Where a person is apprehended under the order or warrant he shall be forthwith conveyed to a prison or other place of safe custody and kept therein-
    - (a) in a case where he is apprehended under a warrant of committal issued under section 72 of this Act, until further order of the home court; and
    - (b) in a case where he is apprehended under any other order or warrant, until the expiration of the period mentioned in the order or warrant, unless sooner discharged by law.
  - (4) Where an order or warrant of commitment is sent by the registrar of a home court

to the registrar of another court for execution under the provisions of this section, the judge or magistrate of that other court shall have the same power as the judge or magistrate of the home court of ordering the discharge of the debtor under section 75 of this Act.

40. (1) Where a bailiff, being employed to execute any process against the property or person of a judgment debtor, loses the opportunity of executing the process by reason of neglect, connivance, or omission, any party aggrieved thereby may complain to the court issuing the process.
- (2) On any such complaint the court, if the neglect, connivance or omission is proved to its satisfaction, shall order the bailiff to pay such damages as it appears that the complainant has sustained by reason thereof, not exceeding in any case the sum for which the execution issued.
41. No sheriff or other officer in executing any process of a court, and no person at whose instance any such process is executed, shall be deemed a trespasser by reason of any irregularity or informality-
- (a) in any proceedings on the validity of which the process depends; or
- (b) in the form of the process or in the mode of executing it, but any person aggrieved may bring an action for any special damage sustained by him by reason of the irregularity or informality against the person guilty thereof:
- Provided that no costs shall be recovered in such an action unless the damages awarded exceed four naira.
42. (1) No action shall be commenced against any bailiff for anything done in obedience to any process issued by a court unless-
- (a) a demand for inspection of the process and for a copy thereof is made or left at the office of the bailiff by the party intending to bring the action or his solicitor or agent, in writing signed by the person making the demand; and
- (b) the bailiff refuses or neglects to comply with the demand within six days after it is made.
- (2) If an action is commenced against a bailiff in a case where such demand has been made and not complied with, judgment shall be given for the bailiff if the process is produced or proved at the trial, notwithstanding any defect of jurisdiction or other irregularity in the process but the Judge or magistrate who issued the process may be joined as a defendant in the action, and if the Judge or magistrate is so joined and judgment is given against him, the costs to be recovered by the plaintiff against the judge or magistrate shall include such costs as the plaintiff is liable to pay to the bailiff.
- (3) In this section, except in paragraph (a) of subsection (1) thereof, the expression "bailiff" includes any person acting by the order and in aid of a bailiff.
43. In any action commenced against a person for anything done in pursuance of this Act, the production of the process of the court shall be deemed sufficient proof of the authority of the court previous to the issue of the process.

44. If sufficient movable property of the judgment debtor can be found in the Federal Capital Territory, Abuja or the State as the case may be to satisfy the judgment and costs and the costs of execution, execution shall not issue against his immovable property, but if no movable property of the judgment debtor can with reasonable diligence be found, or if such property is insufficient to satisfy the judgment and costs and the costs of execution, and the judgment debtor is the owner of any immovable property, the judgment creditor may apply to the court for a writ of execution against the immovable property of the judgment debtor, and execution may issue from the court against the immovable property of the judgment debtor in accordance with the provisions of this Act, and any rules made thereunder:

Provided that where the judgment has been obtained in a magistrate court execution shall not issue out of the magistrate's court against the immovable property but shall issue out of the High Court upon the conditions and in the manner prescribed.

45. Where the judgment debtor is a citizen of Nigeria, and the property attached is the right, title or interest of the judgment debtor in a building owned or occupied by the judgment debtor which building or the right to occupy the building the judgment debtor is not entitled under customary law to alienate but the materials or some of the materials used in construction thereof the judgment debtor is entitled to remove, the right, title or interest of the judgment debtor in such building shall not be sold without the leave of the court first obtained, which leave may, at the discretion of the court, be refused or granted with or without conditions attached.

46. (1) Every house or other building belonging to the owner of the land on which it stands shall be dealt with as immovable property and may be taken in execution accordingly, and where any house or other building is on land which is not the property of the owner of the house or other building, or on land held under the provisions of the Land Use Act, all the right, title and interest of the owner of the house or other building in the land on which the house or building is erected may be sold, together with the house or other building, and the same shall be dealt with as immovable property, subject to the provisions of the said Act.

(2) In any such case as last aforesaid any rent reserved by such lease, certificate of occupancy or instrument and remaining unpaid shall be recoverable as in section 35 of this Act.

47. At any time within twenty-one days from the date of the sale of any immovable property application may be made to the court to set aside the sale on the ground of any material irregularity in the conduct of the sale, but no sale shall be set aside on the ground of such irregularity unless the applicant shall prove to the satisfaction of the court that he has sustained substantial injury by reason of such irregularity.

48. If no such application as is mentioned in section 47 of this Act is made, the sale shall be deemed absolute. If such application be made and the objection be disallowed the court shall make an order confirming the sale; and in like manner, if the objection be allowed, the court shall make an order setting aside the sale for irregularity.

49. Wherever a sale of immovable property is set aside the shall be entitled to receive back any money deposited or purchase paid by him on account of such sale, with or without interest, to be paid by such parties and in such manner as it may appear proper to the court to direct in each instance.

50. After a sale of immovable property shall have become absolute in manner aforesaid, the court shall grant a certificate to the person who may have been declared the



purchaser at such sale, to the effect that he has purchased the right title and interest of the judgment debtor in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right title and interest.

51. If the property sold shall consist of a house, land or other immovable property in possession of a judgement debtor or some person on his behalf or of some person claiming under a title created by the judgment debtor subsequently to the attachment of such property, the court shall, on the application of the purchaser, order delivery thereof to be made by putting the party to whom the house, land or other immovable property may have been sold or any person whom he may appoint to receive delivery on his behalf, in possession thereof and, if need be, by removing any person who may refuse to vacate the same.
52. If the purchaser of any immovable property sold in execution shall, notwithstanding the order of the court, be resisted or obtaining obstructed in obtaining possession of the property the provisions.
53. (1) Where the highest bidder at a sale is an alien for the purposes of the Land Use Act who were it not for the provisions of that Act would be held to be the purchaser, a certificate of title under section 50 of this Act shall not issue unless and until the approval of the Governor is signified in accordance with the terms of that Act.
- (2) Where the property sold in execution is a right of occupancy under the Land Use Act, a certificate of title under section 50 of this Act shall not issue unless and until such consent to the alienation of the right as is required by that Act shall have had and obtained.
54. (1) In the application of sections 44 to 53 of this Act to the Northern States the following provisions shall apply-
- (a) where all the parties to a suit are Muslims, or
- (b) where in any other suit the person applying for a writ of execution and the person against whose property the writ is to be directed are Muslims;
- the court to which application is made shall be guided by the principles of Islamic law relating to the levying of execution of immovable property and any writ issued against immovable property shall in such a case as aforesaid be issued subject to Islamic law and the person applying for such writ shall prove the Islamic law on the point whether or not such Islamic law is to his benefit.
- (2) For the purpose of this section any firm, body of persons or company, other than a company limited by shares, the members of which are all Muslims, shall be deemed to be a Muslim as if such firm, body of persons or company were an individual person.

#### **Part IV** **Judgement Summons**

55. (1) Where a judgment debtor makes default in payment of any sum recovered against him or any instalment thereof under a judgement, the judgement creditor may apply to any court for the issue of a summons, hereinafter called a judgment

summons, requiring the judgment debtor to appear and be examined on oath as to his means, and the court shall, unless it sees good reason to the contrary, issue such a summons.

- (2) The application may be made-
  - (a) where the judgement or order is against one person only, or where the application is for the issue of a judgment summons against only one of two or more persons jointly liable under the judgment or order, in the court for the division or district in which the debtor resides or carries on business; or
  - (b) where the application is for the issue of a judgment summons against two or more persons jointly liable under the judgment or order, in the court for the division or district in which any one of the joint debtors resides or carries on business.
- (3) The judgement creditor shall file a praecipe in the appropriate form containing the particulars required by that form, and thereupon a judgment summons shall be issued in such a form as is applicable to the case.

**56.** Where the name or address of any person as given in the praecipe differs from the name or address in the judgment or order both names and addresses shall be inserted in the judgment summons as follows-

C.D. of *(name and address as given in the praecipe)* sued or suing as A.B. of *(name and address in the judgment or order)*.

**57. (1)** Where a person entitled to enforce a judgment or order against a firm desires to issue a judgment summons against any person whom he alleges to be liable under the judgment or order he shall file a praecipe and affidavit in the required forms together with a copy of the affidavit which shall be served with the judgment summons.

(2) If the person alleged to be liable does not appear on the day fixed for the hearing he shall be deemed to admit his liability to pay the amount due but if he appears and denies the liability the court may determine the question of liability on the evidence then before it or may order the issue of liability to be tried in such manner as it thinks fit.

**58.** Where it appears to the court that there is probable cause to believe the judgment debtor, for the purpose of avoiding examination, is about to leave the division or district in which he normally resides or carries on business, or where he does not appear in obedience to such summons, the court may in its discretion order that the judgment debtor be brought before the court and may issue a warrant for his arrest and for his custody in the debtors' prison until the day appointed for such examination when he shall be brought before the court under the said warrant unless sooner discharged by order of the court and if he is in custody the court may issue an order to the officer in charge of the prison in which he is detained to bring him before the court.

**59.** The court may enlarge the time for return to the order and may direct that the warrant shall only issue after a certain time and in the event of the continued refusal or neglect of the judgement debtor at that time to comply with the judgment summons.

**60. (1)** On the appearance of the judgement debtor before the court on the summons or warrant, he may be examined on oath, by or on behalf of the judgment creditor and by the court-

- (a) respecting his ability to pay the money directed to be paid and for the discovery of property applicable to such payment, and as to what debts are owing to him, and as to the disposal which he may have made of any property; and he shall be bound to produce on oath or otherwise, all books, papers and documents in his possession or power relating to property applicable to such payment; and
  - (b) respecting the circumstances in which he contracted or incurred the debt or liability in respect of which the judgement was given and respecting the means of expectation he then had of paying or discharging the debt or liability.
- (2) Whether the judgement debtor appears or not the judgement creditor and all other witnesses whom the court thinks requisite may be examined on oath or otherwise respecting the matters aforesaid.
- 61.** The court may, if it thinks fit, adjourn the examination from time to time, and require from the judgement debtor such security for his appearance at the adjourned hearing as seems fit, and in default of his finding security may commit him to prison, there to remain until the adjourned hearing, or may discharge him from custody.
- 62.** The court may, upon such investigation as aforesaid, make an interim order for the protection of any property applicable or available in discharge of the judgment debt, as it shall think expedient.
- 63.** At the conclusion of the investigation the court may make such one or more of the orders following as the case may require:-
- (a) an order for the commitment of the judgment debtor to prison in accordance with the provisions of section 65 of this Act;
  - (b) an order for the attachment and sale of the judgment debtor' s property;
  - (c) an order for the payment of money by instalments or otherwise by the judgment debtor, and
  - (d) an order for the discharge of the judgment debtor from prison.
- 64.** A court at the hearing of a cause, or at any adjournment thereof, shall have the same power of examining the parties and other persons touching the several things mentioned in section 60 of this Act, and of making an order for the protection of property, as if the defendant had appeared in answer to a judgment summons.

*Committal to Prison*

- 65. (1)** Subject to the provisions hereinafter contained, the court at the conclusion of such investigation as aforesaid, but not otherwise, may commit to prison, for any term not exceeding six weeks, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any judgment or order of any court for the payment of any sum:

Provided that such jurisdiction shall only be exercised where it is proved, to the satisfaction of the court, that the person making default either has, or has had since

the date of the judgment or order, the means to pay the sum in respect of which he has made default.

- (2) Proof of the means of the person making default may be given in such manner as the court thinks just; and, for the purposes of such proof, the debtor and any witnesses may be summoned and examined upon oath.
- (3) For the purposes of this section, the court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.
- (4) Any person imprisoned under this section shall be discharged out of custody upon a certificate signed by the creditor at whose instance the debtor was imprisoned, or by any officer of the court, to the effect that such person has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs, if any, or upon default by the judgment creditor in payment of the allowance, if any, for the subsistence of the judgment debtor.

#### *Misconduct of Judgment Debtor*

66. If a party summoned as a judgment debtor shall not attend as required by the summons and shall not excuse his non-attendance to the satisfaction of the court or shall refuse to be sworn or to disclose the matters on which he shall be examined, or shall not answer to the satisfaction of the court, or if it appears to the court by an examination of a judgment debtor or other evidence-
- (a) that the judgment debtor has then or has had since the judgment sufficient means to pay the money directed to be paid by him, or part thereof, and has made default in payment, and that such default is due to his refusal or willful neglect to pay on demand;
  - (b) that with intent to defraud or delay his creditors or any of them he has made or suffered any gift, delivery or transfer of any property, or removed property from the jurisdiction of the court; or
  - (c) that the debt or liability in respect of which the judgment has been given, has been contracted or incurred by him by fraud or false pretence or breach of trust committed by him, or by reason of any damages which he has been adjudged to pay on account of any assault or slander committed by him; or
  - (d) that forbearance of the debt was obtained by him by fraud or false pretence; or
  - (e) that the debt or liability was willfully contracted or incurred by him without his having at the same time a reasonable expectation of being able to pay or discharge it; or
  - (f) that the judgment debtor under a judgment other than for the payment of money has then or has had since the judgment the power of complying with the judgment and has refused or neglected to do so, then and in any such case the court may, without prejudice to any of its powers in relation to judgment summonses hereinbefore conferred, issue a warrant for the arrest of such judgment debtor and his detention in custody, or for his detention if already in custody, until further order, or if it thinks fit may

make an order calling upon such judgment debtor to show cause why he should not be punished for his misconduct.

67. If such judgment debtor is arrested or in custody he shall be brought before the court on the first convenient opportunity, and shall then, or if an order to show cause as aforesaid has been made, he shall on appearing on the return-day of the order, have opportunity of showing cause why he should not be punished.
68. If such judgment debtor does not show cause to the satisfaction of the court why he should not be punished, or if being ordered to show cause as aforesaid he does not attend the court and does not establish sufficient reason for not attending, the court may remand the judgment debtor to prison if he has been already arrested, or issue a warrant for his arrest and commitment as for a contempt of court.
69. A person committed on account of any misconduct enumerated in section 66 of this Act may not be committed to prison for a longer period than one year in any event, or for a longer period than six months if the judgment be for payment of money not exceeding two hundred naira, or for a longer period than three months if the judgment be for payment of money not exceeding thirty naira.
70. The court may in its discretion direct that any judgment debtor ordered to be imprisoned on account of any misconduct as aforesaid shall be employed in work within the prison during any period of such imprisonment.
71. The work shall be of such nature as may be specified by regulations made under the Prisons Act.
72. If any person refuses or neglects to comply with an order made against him, other than for payment of money, the court, instead of dealing with him as a judgement debtor guilty of the misconduct defined in paragraph (f) of section 66 of this Act, may in order that he be committed to prison and detained in custody until he has obeyed the order in all things that are performed and given such security as the court thinks fit to obey the other parts of the order, if any, at the future times thereby appointed, or in case of his no longer having the power to obey the order then until he has been imprisoned for such time or until he has paid such fine as the court directs.
73. Where a judgment debtor has been imprisoned on account of any misconduct enumerated in section 66 of payment of the judgment debt, together with the prescribed costs, if any, or upon the request of the judgment creditor, or upon default by the judgment creditor in payment of the allowance, if any, for the subsistence of the judgement debtor, the court for his discharge, to take effect either immediately or after he has been imprisoned for such portion of the term of imprisonment ordered as the court in its discretion may think fit to appoint, and the court may also make any order respecting the expenses of his imprisonment that may be necessary and just.
74. Any person imprisoned under the provisions of section 65 or 66 of this Act may apply to the court for his discharge. The application shall be accompanied by a full statement and account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him, excepting the necessary wearing apparel of himself and his family, and the necessary implements of his trade, if any, to the value of ten naira, and of the places respectively where such property is to be found. The application shall be verified by oath or affidavit.
75. (1) On such application being made the court shall cause the judgment creditor to be furnished with a copy of the statement and account of the judgment debtor's

property and shall fix a reasonable time within which the judgment creditor may cause the whole or any part of such property to be attached and shall fix a time for examining and hearing the parties.

- (2) If the court is satisfied upon such inquiry, wherein the onus of proof shall be upon the party applying for discharge, that the judgment debtor has made a full surrender and disclosure of his property, and that he is unable because of unavoidable misfortune to satisfy the judgment, and, where he has been imprisoned under section 65 of this Act, that he has not been guilty of any misconduct enumerated in section 66 of this Act, and that he ought to be discharged, the court may make an order for the liberation of the judgment debtor:

Provided that if it shall subsequently be shown to the satisfaction of the court that the debtor has not made a full disclosure the debtor shall upon the order of the court be recommitted to prison-

- (a) where he has previously been imprisoned under section 65 of this Act, for such time not exceeding six weeks as may be specified by the court; and
- (b) where he has previously been committed on account of any misconduct enumerated in section 66 of this Act, for such time as may be specified by the court not exceeding the maximum period for which he might have been committed in the first instance.

76. No imprisonment under this Act shall operate as a satisfaction or extinguishment of any debt, demand or cause of action, or deprive or extinguish any person of any right to take out execution against the movable or immovable property of the person imprisoned in the same manner as if such imprisonment had not taken place.
77. No imprisonment under this Act shall prevent a judgment debtor from being again imprisoned for any act of willful disobedience or other default or misconduct rendering him liable to be imprisoned, occurring or continuing after his imprisonment or release; but except in such cases, a party who has once been released from imprisonment shall not be imprisoned again upon the same judgment.

#### *Subsistence of Debtor Prisoners*

78. Where the judgment debtor is committed to prison under this Act, the court shall fix whatever monthly allowance it shall think sufficient for his subsistence, not exceeding forty-five kobo per day, which shall, subject to the provisions of section 81 of this Act, be paid by the judgement creditor by equal monthly instalments in advance before the first day of each month to the registrar, the first payment to be made before the order or warrant of commitment is issued, for such portion of the current month as may remain unexpired:

Provided that if it shall be proved that any judgment debtor has sufficient means for maintaining himself, it shall be competent for the court, after hearing such judgment debtor, to order that no subsistence money be allowed.

79. (1) In case of the serious illness of any person imprisoned under this Act the court may, on the certificate of a medical officer, make an order for the removal of such person to a Government hospital, and for his treatment there under custody; the period of such person's stay in hospital shall be counted as part of his term of imprisonment and his subsistence allowance shall be paid unless the court shall see

fit in either case to order otherwise.

(2) The court may order that any hospital charges in excess of the subsistence allowance ordered to be paid shall be borne by the Government or the judgment creditor.

80. Sums disbursed by an execution creditor for the subsistence of a judgment debtor in prison or hospital shall be added to the costs of the suit and shall be recoverable by the attachment and sale of the property of the judgment debtor but he shall not be detained in custody or arrested on account of any sums so disbursed.

81. (1) In every case where a person is committed to prison on account of any misconduct enumerated in section 66 of this Act as well as in every case of a person committed for contempt of court, the court may direct that the expenses of the conveyance of such person to prison and of his maintenance during his imprisonment shall be defrayed in the first instance by the principal officer of the Treasury of the State or, in the case of the Federal Capital Territory, Abuja, the Accountant-General of the Federation and if the court considers that it is expedient in the interests of justice that the expenses shall be so defrayed, the court shall so direct.

(2) The principal officer of the Treasury of the State or, in the case of the Federal Capital Territory, Abuja, the Accountant-General of the Federation shall in all such cases be entitled to recover the sums so disbursed by him by attachment and sale of the property of the person imprisoned or he may, if the court so directs, recover such sums from the judgment creditor.

(3) In case the court shall not direct the said expenses to be defrayed by the principal officer of the Treasury of the State or, in the case of the Federal Capital Territory, Abuja, the Accountant-General of the Federation the same shall be defrayed by the judgment creditor.

(4) The judgment creditor may in all cases recover all sums disbursed by him for expenses as aforesaid from the judgment debtor by attachment and sale of the property of the judgment debtor.

#### *Sequestration*

82. In case the person against whom an order or warrant of arrest, commitment, or imprisonment issues is not and cannot be found, or is taken and detained in custody without obeying the judgment, the court may make an order that a writ of sequestration do issue against his property, and such writ shall be issued and executed in the prescribed manner.

### **Part V**

#### **Attachment of debts by garnishee order**

83. (1) The court may, upon the exparte application of any person who is entitled to the benefit of a judgment for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment and upon affidavit by the applicant or his legal practitioner that judgment has been recovered and that it is still unsatisfied and to what amount and that any other person is indebted to

such debtor and is within the State, order that debts owing from such third person, hereinafter called the garnishee, to such debtor shall be attached to satisfy the judgment or order, together with the costs of the garnishee proceedings and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid.

- (2) At least fourteen days before the day of hearing a copy of the order nisi shall be served upon the garnishee and on the judgment debtor.
- 84.** (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.
- (2) In such cases the order of notice must be served on such public officer or on the registrar of the court, 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.
- 85.** Service of an order that a debt due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the court may direct, shall bind such debt in his hands.
- 86.** If the garnishee does not within the prescribed time pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, together with the costs of the garnishee proceedings, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, the court upon proof of service may order execution to issue, and it may issue accordingly without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.
- 87.** If the garnishee appears and disputes his liability the court, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in any proceedings may be tried or determined, or may refer the matter to a referee.
- 88.** Whenever in any proceedings to obtain an attachment of a debt it is suggested by the garnishee that the debt sought to be attached belongs to some third person or that any third person has a lien or charge upon it, the court may order such third person to appear and state the nature and particulars of his claim upon such debt.



89. If the third person as described in the last preceding section does not appear, the court on proof of service of a copy of the order may proceed to make an order as if such person had appeared.
90. Upon the appearance of such third person, after hearing his allegations and those of any other person whom the court may order to appear, the court may order execution to issue to levy the amount due from the garnishee, or any issue or question to be tried and determined, and may bar the claim of such third person, or may make such other order, upon such terms with respect to any lien or charge or otherwise, as the court shall think just.
91. Payment made by or execution levied upon a garnishee under any such proceedings shall be a valid discharge to him against the debtor liable under a judgment or order, to the amount paid or levied, even although such proceeding may be set aside or the judgment or order reversed.
92. After an attachment shall have been made by actual seizure or by written order as aforesaid and in case of attachment by written order, after it shall have been duly intimated and made known in manner aforesaid, any alienation without leave of the court of the property attached, whether by sale, gift or otherwise and any payment of any debt or debts or dividends or shares to the judgment debtor during the continuance of the attachment shall be null and void.

## **Part VI**

### **Forms and Rules**

#### *Forms*

93. (1) Subject to the express provisions, if any, of the Rules, the forms contained in the First Schedule to this Act may, in accordance with any instructions contained in the said forms and with such variations as the circumstances of the particular case may require, be used in the cases to which they apply and, when so used, shall be good and sufficient in law.
- (2) The forms in the First Schedule may be added to, repealed, replaced or varied by rules of court in all respects as if they had originally been so made.

#### *Rules*

94. The Chief Judge of the Federal Capital Territory, Abuja, with the approval of the President, and the Chief Judge of a State, with the approval of the Governor, may make rules of court in respect of any or all of the following matters:-
- (a) the duties of bailiffs;
  - (b) the procedure to be adopted by bailiffs and others on the receipt of money paid or received at a sale on execution or otherwise in respect of process of execution and the accounting therefore;
  - (c) the fees and allowances, if any, to be paid to, or for the use of the services of bailiffs and other officers of the court;
  - (d) the fees to be paid in respect of any application or the filing of any document

or in respect of anything done or furnished under this evidence;

- (e) the conditions precedent to the issue of any process;
- (f) the issue of process to or against any person or class of persons;
- (g) anything to be done by any person in respect of the issue or execution of process;
- (h) the method of attaching any property;
- (i) the enforcement of judgments not for the payment of money;
- (j) the procedure in execution against immovable property;
- (k) the entertainment and adjudication of claims to property attached or sold in execution;
- (l) the custody or disposal of property attached; (m) the appointment of managers or receivers over attached or sequestered property;
- (n) the procedure on sale in execution of writs and the persons by whom such sales may be conducted;
- (o) the method of transfer of property, movable or immovable, shares, securities and other chattels on sales in execution of writs;
- (p) the circumstances in which proceedings in process may be transferred from one court in a division or district to another court in the same division or district or to a court in another division or district;
- (q) the procedure to be followed in the High Court upon an application of a judgment creditor in a magistrate's court for a writ of execution in respect of immovable property;
- (r) prescribing anything or any person requires by Parts III, IV, V and VI of this Act to be prescribed, and
- (s) generally for giving effect to the provisions and intentions of Parts III, IV, V and VI of this Act and prescribing and regulating procedure thereunder.

## **Part VII**

### **Service of the Process and Enforcement of the Judgements of Court of the Federal Capital Territory, Abuja and the States throughout Nigeria.**

**95. (1)** In this Part unless the context otherwise requires-

"Capital Territory" means the Federal Capital Territory, Abuja;

"court" means a court to which Parts III, IV, V, and VI apply;

"judgment" includes any judgment, decree or order given or made by a court in a suit whereby any sum of money is made payable or any person is required to do or

not to do any act or thing other than payment of money;

"writ of summons" includes any writ or process by which a suit is commenced or of which the object is to require the appearance of any person against whom relief is sought in a suit or who is interested in resisting such relief.

*Service of Process*

- 96.** (1) A writ of summons issued out of or requiring the defendant to appear at any court of a State or the Capital Territory may be served on the defendant in any other State or the Capital Territory.
- (2) Such service may, subject to any rules of court which may be made under this Act, be effected in the same manner as if the writ was served on the defendant in the State or the Capital Territory in which the writ was issued.
- 97.** Every writ of summons for service under this Part out of the State or the Capital Territory in which it was issued shall, in addition to any other endorsement or notice required by the law of such State or the Capital Territory, have endorsed thereon a notice to the following effect (that is to say)-
- "This summons (or as the case may be) is to be served out of the ..... State (or as the case may be) ..... and in the ..... State (or as the case may be)."
- 98.** A writ of summons for service out of the State or the Capital Territory in which it was issued may be issued as a concurrent writ with one for service within such State or the Capital Territory and shall in that case be marked as concurrent.
- 99.** The period specified in a writ of summons for service under this Part as the period within which a defendant is required to answer before the court to the writ of summons shall be not less than thirty days after service of the writ has been effected, or if a longer period is prescribed by the rules of the court within which the writ of summons is issued, not less than that longer period.
- 100.** Any defendant who has been served under this Part with a writ of summons may apply to the court within which the writ was issued for an order compelling the plaintiff to give security for costs, and upon such application the court may make the order.
- 101.** When no appearance is made by a defendant to a writ of summons served on him under this Part, if it is made to appear to the court from which the writ was issued-
- (a) that the subject matter of the suit, so far as it concerns such defendant, is-
- (i) land or other property situate or being in the State or the Capital Territory in which the writ was issued; or
- (ii) shares or stock of a corporation or company having its principal place of business within that State or the Capital Territory; or
- (iii) any deed, will, document or thing affecting any such land, share, stock or property; or
- (b) that any contract is respect of which relief is sought in the suit against such defendant by way of enforcing, rescinding, dissolving, annulling or otherwise

affecting such contract, or by way of recovering damages or other remedy against such defendant for a breach thereof, was made or entered into within that State or the Capital Territory; or

- (c) that the relief sought against the defendant is in respect of a breach, within that State or the Capital Territory, of a contract wherever made; or
- (d) that any act or thing sought to be restrained or removed or for which damages are sought to be recovered, was done or is to be done or is situate within that State or the Capital Territory; or
- (e) that at the time when the liability sought to be enforced against the defendant arose he was within that State or the Capital Territory; or
- (f) in a matrimonial cause that the domicile of the person against whom that relief is sought is within that State or the Capital Territory, and if it is also made to appear to such court
- (g) that the writ was personally served on the defendant, or in the case of a corporation served on its principal officer or manager or secretary within the State or tile Capital Territory in which service is effected; or
- (h) that reasonable efforts were made to effect personal service thereof on the defendant, and that it came to his knowledge or in the case of a corporation that it came to the knowledge of such officer as aforesaid (in which case it shall be deemed to have been served on the defendant), such court may on the application of the plaintiff order from time to time that the plaintiff shall be at liberty to proceed in the suit in such manner and subject to such conditions as the court may deem fit and thereupon the plaintiff may proceed in the suit against such defendant accordingly.

- (2) Any such order may be rescinded or set aside or amended on the application of the defendant.

**102.** This Pan of this Act does not confer on any court jurisdiction to hear or determine any suit which it would not have jurisdiction to hear or determine if the writ of summons had been served within the State or the Capital Territory in which the writ was issued.

- 103.** (1) When any process issued by a court of a State or part of the Federation other than a warrant of arrest or commitment, is required to be served on any person, such process may be served on such person in any other State or the Capital Territory.
- (2) Such service may, subject to any rules of court which may be made under this Part, be effected in the same way, and shall have the same force and effect, as if the service were effected in the State or the Capital Territory in which the process was issued.
  - (3) Thereupon all such proceedings may be taken as if the process had been served in the State or the Capital Territory in which it was issued.
  - (4) A warrant of arrest or commitment issued by a court of a State or the Capital Territory in the exercise of its civil jurisdiction may be executed in another State or the Capital Territory in the manner provided in Chapter XII of the Criminal Procedure Act in the case of warrants for the apprehension of persons charged with an offence.

- (5) This section does not apply to a writ of summons or any process issued in accordance with part XIII of the Evidence Act.

*Enforcement of Judgments*

- 104.** Any person in whose favour a judgment is given or made in a court of any State or the Capital Territory may obtain from the registrar or other proper officer of such court a certificate of such judgment in the form and containing the particulars set forth in the Second Schedule or as near thereto as the circumstances will permit, which certificate such officer is hereby required to grant under his hand and the seal of such court.
- 105.** (1) Upon production of such certificate to the registrar or other proper officer of any court of like jurisdiction in any other State or the Capital Territory such officer shall forthwith register the same by entering the particulars thereof in a book to be kept by such officer and to be called "The Nigerian Register of Judgment".
- (2) From the date of registration the certificate shall be 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, and the like proceedings may be taken upon the certificate as if the judgment had been a judgment of that court.
- (3) For the purpose of this section-
- (a) the High Courts (including any court deemed to be a High Court) of the several States and the Capital Territory are courts of like jurisdiction to one another;
- (b) the magistrates' courts exercising jurisdiction in the several States and the Capital Territory are of like jurisdiction to one another.
- 106.** (1) The court in which any such certificate of a judgment has been registered may, upon being satisfied that the registration of the judgment was reasonably justified under the circumstances, order that the judgment creditor's costs of registration and other proceedings under this Part, to an amount to be assessed by the court, but not exceeding the amount prescribed be paid by the judgment debtor to the judgment creditor.
- (2) Any such order shall be deemed to be incorporated with the of certificate, and the amount payable thereunder to be payable under the certificate.
- 107.** No process shall be issued upon such certificate unless an affidavit is first filed in the court out of which it is intended to issue such process made by the judgment creditor or by some other person cognizant of the facts of the case, stating-
- (a) that the amount for which process is proposed to be issued is actually due and unpaid; or
- (b) that an act ordered to be done remains undone; or
- (c) that the person ordered to forebear from doing an act has disobeyed the order, and no process shall be issued for a larger amount than that sworn to.
- 108.** The court in which any such certificate of a judgment has been registered shall, in respect of the issue of process upon the certificate and the enforcement of the judgment, have the same control and jurisdiction over the judgment as if the judgment were a

judgment of such court.

- 109. (1)** The court in which any such certificate of a judgment has been registered may, on the application of the judgment debtor order a stay of proceedings on such certificate.
- (2) Such order may be made on such terms as to giving security, or as to making application to the court by which the judgment was given or made to set aside the same or otherwise as to the court may seem fit.
- 110. (1)** When-
- (a) a certificate of judgment is registered in any court; or
- (b) any process is issued in any court upon such certificate; or
- (c) satisfaction of the judgment either in whole or in part is entered in any court upon any such certificate, the registrar or other proper officer of that court shall forthwith notify the same in writing under the seal of the court to the registrar or other proper officer of the court in which the judgment was given or made.
- (2) When any judgment whereof a certificate has been registered in any court has been satisfied in whole or in part, the registrar or other proper officer of the court in which the judgment was given or made shall forthwith, upon such satisfaction being made or notified as the case may be, enter such satisfaction upon the judgment and notify such satisfaction in writing under the seal of the court to the registrar or other proper officer of every other court in which a certificate of the judgment has been registered and such satisfaction shall thereupon be entered upon every such certificate.
- 111.** The Chief Justice of Nigeria may make rules with respect to this Part of this Act including the making of rules of court for prescribing-
- (a) the practice and procedure in connection with the execution and enforcement by the courts of a State or the Capital Territory of the process and judgments of the courts of other State and the Capital Territory;
- (b) the practice and procedure in connection with the service of the process of the courts of a State or the Capital Territory under this Part;
- (c) the fees to be paid in connection with the service of the process of the courts of a State or the Capital Territory under this Part;
- (d) the fees to be paid in connection with the execution and enforcement under this Part by courts of a State or the Capital Territory of the process and judgments of the courts of other States and the Capital Territory;
- (e) the costs to be allowed to a person upon the execution or enforcement under this Part by the courts of a State or the Capital Territory of a judgment or other process of another State or the Capital Territory; and
- (f) the manner of recovery of such fees or costs.
- 112. (1)** A judgment of the former Supreme Court which was given or made before the commencement of this Part shall be deemed for the purposes of this Act to be a

judgment of the High Court of that State or the Capital Territory in which the judicial division in which it was given or made (as delimited on the date of the judgment) is included and the like proceedings may be taken under any of the provisions of this Act upon such judgment as if the judgment had been a judgment of the High Court of that State or the Capital Territory.

- (2) A judgment of a magistrate's court which was given or made before the commencement of this Part shall be deemed to be judgment of a magistrate's Court of that State or the Capital Territory in which the magisterial district in which it was given or made (as delimited at the date of the judgment) is included and the like proceedings may be taken under any of the provisions of this Act upon such judgment as if the judgment had been a judgment of a magistrate's court of that State or the Capital Territory.
- (3) Where a judicial division or magisterial district in which a judgment to which subsection (1) or (2) of this section applies was given or made is included in more than one State or in both a State and the Capital Territory the judgment shall be deemed to be a judgment of the High Court or magistrate's court, as the case may be, of the State or the Capital Territory in which the place shown on the record of the proceedings as the place of the holding of the court is situate and the provisions of subsection (1) or (2) of this section shall apply accordingly.
- (4) Where, in respect of a judgment deemed by this section to be a judgment of a court of a State or the Capital Territory-
- (a) a writ of execution has been transferred before the commencement of this Part under the provisions of section 37 of this Act to a division of the High Court or a district of a magistrate's court which is in another State or the Capital Territory; or
  - (b) a judgment summons has been issued out of a division of the Supreme Court or a district of a magistrate's court which is in another State or the Capital Territory, the registrar or proper officer of the corresponding division or district of the High Court or magistrate's court, as the case may be, in that other State or the Capital Territory shall, upon the application of the judgment creditor, enter the judgment in the *Nigerian Register of Judgments*, and thereafter the like proceedings may be taken under this Act as if a certificate had been obtained and the judgment registered in that court in accordance with the provisions of this Part.

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**Sheriffs and Civil Process Act**  
**Chapter 407**  
**Laws of the Federation of Nigeria 1990**

An Act to make provision for the appointment and duties of sheriffs, the enforcement of

judgements and orders, and the service and execution of civil process of the Courts throughout Nigeria.

*1<sup>st</sup> day of June 1945*

**Part I**  
**Short Title**

1. (1) This Act may be cited as the Sheriffs and Civil Process Act.

**Part II**  
**Interpretation**

*Interpretation*

2. In this Part, unless the context otherwise requires- "court" includes a High Court and a magistrate's court; "process" has the meaning assigned to it in section 19 of this Act.

*Sheriff and Deputy Sheriffs*

3. There shall be appointed for each State of the Federation and the Federal Capital Territory, Abuja, a fit and proper person to be the Sheriff for the State or for the Federal Capital Territory, Abuja.
4. There shall be appointed for each State of the Federation and the Federal Capital Territory, Abuja, a fit and proper person to be the Deputy Sheriff who shall be subject to the general control and direction of the Sheriff.
5. The sheriffs may appoint such number of persons as bailiffs as may be necessary.
6. Every bailiff and every other person who has authority to intermeddle with the execution of writs issued by any court of record, shall before he does so make a declaration, which shall be exempt from stamp duty, in the form in the First Schedule to this Act, or to the like effect, before any judge or magistrate for the division or district in which he exercises such authority.

*Powers, Duties and Liabilities of Sheriff, Deputy Sheriffs, Bailiffs and Police Officers*

7. The sheriff may command any person to arrest any person who has committed or is suspected of having committed a felony, and any person failing to obey such command shall on conviction be liable to a fine of two hundred naira or to imprisonment for one year or to both such fine and such imprisonment.
8. The sheriff shall receive writs and process of a court issued in accordance with this Act and shall be charged with making returns thereto.
9. At the sessions the sheriff shall direct a sufficient number of police constables to be employed to keep order in and within the precincts of the court.



10. The sheriff at the request of a person delivering a writ to him for execution shall give a receipt for that writ stating the hour and the day of its delivery.
11. The sheriff shall perform any other duty or duties as may be imposed upon him by any written law.
12. Where sentence of death has been pronounced upon any person and the President or Governor, as the case may be, has ordered that the sentence shall be carried into execution, the same shall be carried into execution by the sheriff or a deputy sheriff or by some person appointed by the sheriff or deputy sheriff:  
  
Provided that if it appears to the President in the case of the Federal Capital Territory, Abuja or to the Governor in charge of a State that the attendance of the sheriff or a deputy sheriff at the place at which the execution is to be carried out cannot be obtained without undue delay or inconvenience, the President or Governor may detail any other officer in the Territory or in the State, as the case may be, to perform the duties of the sheriff in relation to such execution.
13. Every deputy sheriff may be charged generally with the duties of performance of the sheriff and shall be subject to the same liabilities and protection as the sheriff.
14. A person unlawfully imprisoned by the sheriff, deputy sheriff or any bailiff appointed by the sheriff shall have an action against such sheriff, deputy sheriff or bailiff, as the case may be, in like manner as against any other person that should imprison him without warrant.
15. It shall be the duty of every police officer to assist in the execution of process of the court.

#### *Protection of Sheriffs*

16. Where any goods in the possession of a judgment debtor at the time of seizure by a sheriff, or deputy sheriff, or other officer charged with the enforcement of a writ, warrant, or other process of execution, are sold by such sheriff, deputy sheriff or other officer, without any claim having been made to the same-
  - (a) the purchaser of the goods so sold shall acquire a good title to those goods; and
  - (b) no person shall be entitled to recover against the sheriff, deputy sheriff or other officer or anyone lawfully acting under the authority of either of them, for any sale of such goods, or for paying over the proceeds thereof prior to the receipt of a claim to the said goods, unless it is proved that the person from whom recovery is sought had notice or might by making reasonable inquiry have ascertained that the goods were not the property of the judgment debtor:  
Provided that nothing in this section contained shall affect the right of any claimant who may prove that at the time of sale he had a title to any goods so seized and sold to any remedy to which he may be entitled against any person other than such sheriff, deputy sheriff, or other officer as aforesaid.
17. Neither the sheriff nor any deputy sheriff shall be liable to be sued for any act or omission of any police officer or other person in the execution of any process, which shall have been done or may have occurred either through disobedience or neglect of the orders or instructions given by the sheriff or a deputy sheriff.

18. All fees received by the sheriff, deputy sheriff or bailiff in respect of any duty performed by him in the discharge of his official duties shall be paid into and form part of the Consolidated Revenue Fund of the State or part of the Federation in respect of which the fee is prescribed.

### Part III

#### Enforcement of judgements and orders

##### *Execution and Committals*

19. (1) In this Part and Parts IV, V and VI, unless the context otherwise requires –
- "attached" includes distrained upon and seized;
- "attachment" includes distress and seizure;
- "court" includes the High Court and a magistrate's court;
- "the High Court" means the High Court of the Federal Capital Territory Abuja or of the State.
- "judge" means a judge of the High Court;
- "judgment" includes "order";
- "judgment creditor" means any person for the time being entitled to enforce a judgement;
- "judgment debtor" means a person liable under a judgment;
- "magistrates' court" means a magistrate's court established under a Federal law or any law of the State or under any law having effect as if it were a law of the State.
- "order" includes an injunction, an order for the payment of the costs of any party, and an order for the payment of a counter-claim by a plaintiff;
- "process" means a formal written authority addressed to the sheriff for the enforcement of a judgment in manner provided by this Act or prescribed, and includes writ of execution and warrant and order of arrest, commitment or imprisonment; "sheriff" includes deputy sheriff;
- "writ of execution" includes writ of attachment and sale, writ of delivery, writ of possession and writ of sequestration.
- (2) Nothing in this part or in Part IV, V or VI of this Act shall be construed to authorise the service or execution outside the State of the process of a court.
20. (1) Any sum of money payable under a judgment of a court may be recovered, in case of default or failure of payment thereof forthwith or at the time or times and in the manner thereby directed, by execution against the goods and chattels and the immovable property of the judgment debtor in accordance with the provisions of this Act.

- (2) The registrar on the application of the judgment creditor shall cause to be issued a writ of attachment and sale whereby the sheriff shall be empowered to levy or cause to be levied by distress and sale of goods and chattels, wherever they may be found within the division or district of the court, the money payable under the judgment and the costs of the execution.
- (3) The precise time of the making of an application to the registrar for the issue of a writ shall be entered by him in the book prescribed for the purpose and on the writ, and when more than one such writ is issued they shall be executed in the order of the times so entered.
21. (1) Where a court has made an order for payment of any sum of money by instalments, no writ of execution for the enforcement of the judgment shall be issued until after the default in payment of some instalment according to the order.
- (2) On any such default, execution or successive executions may issue for the whole of the said sum of money and costs then remaining unpaid, or for such part thereof as the court may order, either at the time of making the original order or at any subsequent time.
22. (1) In or upon every writ of execution against the property of any person, the registrar shall cause to be inserted or endorsed the sum of money and costs adjudged, and the fees for the execution of the writ.
- (2) If the judgement debtor, before the actual sale of the property, pays or causes to be paid or tendered to the registrar of the court from which the writ issued, or to the bailiff holding the writ, the sum of money and costs inserted or endorsed as aforesaid, or such part thereof as the judgment creditor agrees to accept in full satisfaction, together with the fees inserted or endorsed as aforesaid, the execution shall be superseded, and the property of the judgment debtor shall be discharged and set at liberty.
23. If at any time upon an inquiry made on the application of the judgment debtor, wherein the onus of proof shall be upon him, it appears to the satisfaction of the court that the judgment debtor has made a full surrender and disclosure of his property in the prescribed manner, and that he is unable because of unavoidable misfortune to satisfy the judgment, and that he has not been guilty of any misconduct cognizable under section 66 of this Act, and that his property ought to be released from attachment, the court may, in its discretion, stay any writ of execution issued in the proceedings for such time and upon such terms as the court thinks fit, and so from time to time until it appears that the cause of inability has ceased.
24. For the purpose of executing a writ to give possession of any premises, it shall not be necessary to remove any goods or chattels from those premises.

*Seizure of Goods and Securities and Custody thereof*

25. Every sheriff or officer executing any writ of execution issued from a court against the goods or chattels of any person may by virtue thereof seize-
- (a) any of the goods and chattels of that person, except the wearing apparel and bedding of that person or his family and the tools and implements of his trade, to the value often naira, which shall to that extent be protected from seizure;

- and
- (b) any money, bank notes, bills of exchange, promissory notes, bonds, specialities or securities for money belonging to that person.
26. Goods seized in execution under process of a court shall thereof-
- (a) be deposited by the bailiff in some fit place; or
- (b) remain in the custody of a fit person approved by the sheriff to be put in possession by the bailiff; or
- (c) be safeguarded in such other manner as the sheriff directs.
27. The sheriff shall hold any bills of exchange, promissory notes, bonds, specialities or other securities for money seized in execution under process of a court as security for the amount directed to be levied by the execution, or for so much thereof as has not been otherwise levied or raised, for the benefit of the judgment creditor, and the judgment creditor may sue in the name of the judgment debtor, or in the name of any person in whose name the judgment debtor might have sued, for the recovery of the sum secured or made payable thereby, when the time of payment thereof arrives.
28. If any person rescues or attempts to rescue any goods seized in execution under process of a court or in any other way resists or obstructs the execution of any process for the enforcement of a judgment of a court, he shall be liable, either on an order made in that behalf by the court from which the writ of execution or other process issues, or on summary conviction, to a fine not exceeding one hundred naira, and any bailiff of the court may take him into custody with or without warrant, and bring him before the court.

#### *Sale of Goods Seized*

29. (1) No goods seized in execution under process of a court shall be sold for the purpose of satisfying the writ of execution until the expiration of a period of at least five days next following the day on which the goods have been so seized unless-
- (a) the goods are of a perishable nature; or
- (b) the person whose goods have been seized so requests in writing;
- Provided that the sheriff may, if he is unable from want of time to complete the sale, adjourn the same for a period of not more than three days, and so on as often as may be necessary:
- Provided further that the court may, if it thinks fit, direct that the sale shall be postponed for any time not exceeding twenty-eight days after the attachment.
- (2) In every case where the property attached is apparently over forty naira in value, it shall be set up for sale by the sheriff in the principal High Court or magistrate's court house of the division or district in which the attachment is made, and if the place where the attachment is made is not within eight kilometres of the court from which the writ of execution issued the judge or magistrate shall give such directions as he thinks fit:
- Provided that the judge or magistrate may, if he thinks fit, in any particular case direct the sale to be held at any other place in the district.

- (3) Every sale shall take place between the hours of seven o'clock in the morning and eight o'clock in the evening and everything set up for sale shall be knocked down to the highest bidder for ready money.
- (4) Notice of the day and hour of sale of any movable property, apparently over forty naira in value, attached, shall be published four days at least before the day of such sale, by being posted upon the door of the court house of the division or district in which the attachment is made and where the sale is to take place at some other place, then at that other place also, and if the court so directs in a newspaper published in Nigeria.
30. (1) Where any goods are to be sold under an execution for a sum exceeding forty naira, including legal incidental expenses, the sale shall, unless the court from which the writ of execution issued otherwise orders, be made by public auction and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on, and during three days next preceding, the day of sale.
- (2) Where any goods are seized in execution and the registrar has notice of another execution or other executions, the court shall not consider an application for leave to sell privately until the prescribed notice has been given to the other execution creditor or creditors, who may appear before the court and be heard on the application.
31. Where the property sold shall consist of goods, chattels, or other movable property in the possession of the judgment debtor, or to the immediate possession of which the judgment debtor is entitled, and of which actual seizure has been made, the property shall be delivered to the purchaser.

*Claims in respect of Property Seized*

32. When writs against the property of any person have been issued from more than one court, the right to the property attached shall be determined according to the order of priority of the respective times of application to the registrars for the issue of the writs.
33. (1) Where a claim is made to or in respect of any property attached in execution under process of a court, the claimant may-
- (a) deposit with the sheriff either-
- (i) the amount of the value of the property claimed; or
- (ii) the sum, if any, which the sheriff is allowed to charge as costs for keeping possession of the property until the decision of the court can be obtained on the claim; or
- (b) give the sheriff in the prescribed manner security for the value of the property claimed.
- (2) For the purpose of this section the amount of the value of the property claimed shall in case of dispute be fixed by appraisalment and where that amount is deposited as aforesaid it shall be paid by the sheriff into court to abide the decision of the court upon the claim.

- (3) In default of the claimant complying with the foregoing provisions of this section, the sheriff shall sell the property as if no such claim had been made, and shall pay into court the proceeds of the sale to abide the decision of the court.

*Interpleader*

34. (1) If a claim is made to or in respect of any property attached in execution under process of a court, or in respect of the proceeds or value thereof, the registrar may, upon the application of the sheriff, as well before as after any action brought against him, issue a summons calling before the court the party at whose instance the process issued and the party making the claim.
- (2) Upon the issue of the summons, any action brought in any court in respect of the claim or of any damage arising out of the execution of the writ shall be stayed.
- (3) On the hearing of the summons, the court shall adjudicate upon the claim, and shall also adjudicate between the parties or either of them and the sheriff upon any claim to damages arising or capable of arising out of the execution of the writ by the sheriff, and shall make such order in respect of any such claim and the costs of the proceedings as it thinks fit.

*Landlords' claims for Rents*

35. (1) The landlord of every premises in which any goods are seized may claim the rent of the premises in arrears at the date of the seizure, at any time within five days next following that date, or before the removal of the goods, by delivering to the bailiff or officer making the levy a claim in writing signed by himself or his agent, stating-
- (a) the amount of the rent claimed to be in arrears;
- (b) the period in respect of which the rent is due.
- (2) Where such a claim is made, the bailiff or officer making the levy shall in addition thereto distrain for the claim ed and the cost of the distress, and shall not within five days next after the distress, sell any part of the goods seized, unless-
- (a) the goods are perishable nature; or
- (b) the person whose goods have been seized so request in writing.
- (3) The bailiff shall afterwards sell under the execution and distress such of the goods as well satisfy-
- (a) first, the costs of and incidental to the sale;
- (b) next, the claim of the landlord not exceeding-
- (i) in a case where the tenement is let by the week, four weeks' rent; and
- (ii) in a case where the tenement is let for any other term less than a year, the rent of two terms of payment,

- (iii) in any other case, one year's rent; and
- (c) lastly, the amount for which the writ of execution issued.
- (4) If any replevin is made of the goods seized the bailiff shall nevertheless sell such portion thereof as will satisfy the costs of and incidental to the sale under the execution and the amount for which the writ of execution issued.
- (5) In any event the surplus of the sale, if any, and the residue of the goods shall be returned to the judgment debtor.
- (6) The fees of the court and bailiff for keeping possession and sale under any such distress shall be the same as would have been payable if the distress had been an execution of the court, and no other fees shall be demanded or taken in respect thereof.

#### *Lien*

36. Where the property sold consists of movable property to which the judgment debtor is entitled, subject to a lien or right of any person to the immediate possession thereof, the delivery to the purchaser shall, as far as practicable, be made by the sheriff giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser thereof.
37. (1) Where a writ of execution has been issued from a court, hereafter in this section referred to as a "home court", against the property of any person and the property or any of it is out of the local division or district of that court, the registrar of that court may send the writ of execution to the registrar of any other court within the jurisdiction of which the property is or is believed to be, with a warrant thereon endorsed or thereto annexed requiring execution of the original writ.
- (2) On the receipt of the warrant, the registrar of the other court shall act in all respects as if the original writ of execution had been issued by the court of which he is registrar and shall within the prescribed time-
- (a) report to the registrar of the home court what he has done in the execution of the writ; and
  - (b) pay over all moneys received in pursuance of the writ.
- (3) Where a writ of execution is sent by the registrar of a home court to the registrar of another court for execution under the provisions of this section, the judge or magistrate of that court, as the case may be, shall have the same power as the judge or magistrate of the home court of staying the execution under section 23 of this Act as respects any property within the jurisdiction of that other court.

#### *Committals*

38. (1) Whenever any order or warrant for the committal of any person to prison is made or issued by a court, whether in pursuance of this or any other Act or Law or of Rules of Court made under this Act, the order or warrant shall be directed to the sheriff, who shall thereby be empowered to take the body of the person against whom the order is made or warrant issued, and deliver him to the officer in charge of the prison mentioned in the order or warrant.

- (2) The officer in charge of the prison mentioned in any such order or warrant shall be bound to receive and keep the person therein mentioned until he is lawfully discharged.
39. (1) Where any order or warrant for the committal of any person to prison has been made or issued, whether in pursuance of this or any other Act or Law or of Rules of Court made under this Act, by a court hereafter in this section referred to as a "home court", and that person is out of the division or district of that court, the registrar may send the order or warrant to the registrar of any other court within the division or district of which that person is or is believed to be, with a warrant thereon endorsed or thereto annexed requiring execution of the original order or warrant.
- (2) On receipt of the warrant, the registrar of the other court shall act in all respects as if the original order or warrant had been issued by the court of which he is registrar and shall within the prescribed time-
- (a) report to the registrar of the home court what he has done in the execution of the order or warrant; and
- (b) pay over all moneys received in pursuance of the order or warrant.
- (3) Where a person is apprehended under the order or warrant he shall be forthwith conveyed to a prison or other place of safe custody and kept therein-
- (a) in a case where he is apprehended under a warrant of committal issued under section 72 of this Act, until further order of the home court; and
- (b) in a case where he is apprehended under any other order or warrant, until the expiration of the period mentioned in the order or warrant, unless sooner discharged by law.
- (4) Where an order or warrant of commitment is sent by the registrar of a home court to the registrar of another court for execution under the provisions of this section, the judge or magistrate of that other court shall have the same power as the judge or magistrate of the home court of ordering the discharge of the debtor under section 75 of this Act.
40. (1) Where a bailiff, being employed to execute any process against the property or person of a judgment debtor, loses the opportunity of executing the process by reason of neglect, connivance, or omission, any party aggrieved thereby may complain to the court issuing the process.
- (2) On any such complaint the court, if the neglect, connivance or omission is proved to its satisfaction, shall order the bailiff to pay such damages as it appears that the complainant has sustained by reason thereof, not exceeding in any case the sum for which the execution issued.
41. No sheriff or other officer in executing any process of a court, and no person at whose instance any such process is executed, shall be deemed a trespasser by reason of any irregularity or informality-
- (a) in any proceedings on the validity of which the process depends; or
- (b) in the form of the process or in the mode of executing it, but any person aggrieved may bring an action for any special damage sustained by him by reason of the irregularity or informality against the person guilty thereof:



Provided that no costs shall be recovered in such an action unless the damages awarded exceed four naira.

42. (1) No action shall be commenced against any bailiff for anything done in obedience to any process issued by a court unless-
- (a) a demand for inspection of the process and for a copy thereof is made or left at the office of the bailiff by the party intending to bring the action or his solicitor or agent, in writing signed by the person making the demand; and
  - (b) the bailiff refuses or neglects to comply with the demand within six days after it is made.
- (2) If an action is commenced against a bailiff in a case where such demand has been made and not complied with, judgment shall be given for the bailiff if the process is produced or proved at the trial, notwithstanding any defect of jurisdiction or other irregularity in the process but the Judge or magistrate who issued the process may be joined as a defendant in the action, and if the Judge or magistrate is so joined and judgment is given against him, the costs to be recovered by the plaintiff against the judge or magistrate shall include such costs as the plaintiff is liable to pay to the bailiff.
- (3) In this section, except in paragraph (a) of subsection (1) thereof, the expression "bailiff" includes any person acting by the order and in aid of a bailiff.
43. In any action commenced against a person for anything done in pursuance of this Act, the production of the process of the court shall be deemed sufficient proof of the authority of the court previous to the issue of the process.

#### *Execution against Immovable Property*

44. If sufficient movable property of the judgment debtor can be found in the Federal Capital Territory, Abuja or the State as the case may be to satisfy the judgment and costs and the costs of execution, execution shall not issue against his immovable property, but if no movable property of the judgment debtor can with reasonable diligence be found, or if such property is insufficient to satisfy the judgment and costs and the costs of execution, and the judgment debtor is the owner of any immovable property, the judgment creditor may apply to the court for a writ of execution against the immovable property of the judgment debtor, and execution may issue from the court against the immovable property of the judgment debtor in accordance with the provisions of this Act, and any rules made thereunder:
- Provided that where the judgment has been obtained in a magistrate court execution shall not issue out of the magistrate's court against the immovable property but shall issue out of the High Court upon the conditions and in the manner prescribed.
45. Where the judgment debtor is a citizen of Nigeria, and the property attached is the right, title or interest of the judgment debtor in a building owned or occupied by the judgment debtor which building or the right to occupy the building the judgment debtor is not entitled under customary law to alienate but the materials or some of the materials used in construction thereof the judgement debtor is entitled to remove, the right, title or interest of the judgement debtor in such building shall not be sold without the leave of the court first obtained, which leave may, at the discretion of the court, be refused or granted with or without conditions attached.

46. (1) Every house or other building belonging to the owner of the land on which it stands shall be dealt with as immovable property and may be taken in execution accordingly, and where any house or other building is on land which is not the property of the owner of the house or other building, or on land held under the provisions of the Land Use Act, all the right, title and interest of the owner of the house or other building in the land on which the house or building is erected may be sold, together with the house or other building, and the same shall be dealt with as immovable property, subject to the provisions of the said Act.
- (2) In any such case as last aforesaid any rent reserved by such lease, certificate of occupancy or instrument and remaining unpaid shall be recoverable as in section 35 of this Act.
47. At any time within twenty-one days from the date of the sale of any immovable property application may be made to the court to set aside the sale on the ground of any material irregularity in the conduct of the sale, but no sale shall be set aside on the ground of such irregularity unless the applicant shall prove to the satisfaction of the court that he has sustained substantial injury by reason of such irregularity.
48. If no such application as is mentioned in section 47 of this Act is made, the sale shall be deemed absolute. If such application be made and the objection be disallowed the court shall make an order confirming the sale; and in like manner, if the objection be allowed, the court shall make an order setting aside the sale for irregularity.
49. Wherever a sale of immovable property is set aside the shall be entitled to receive back any money deposited or purchase paid by him on account of such sale, with or without interest, to be paid by such parties and in such manner as it may appear proper to the court to direct in each instance.
50. After a sale of immovable property shall have become absolute in manner aforesaid, the court shall grant a certificate to the person who may have been declared the purchaser at such sale, to the effect that he has purchased the right title and interest of the judgment debtor in the property sold, and such certificate shall be taken and deemed to be a valid transfer of such right title and interest.
51. If the property sold shall consist of a house, land or other immovable property in possession of a judgement debtor or some person on his behalf or of some person claiming under a title created by the judgment debtor subsequently to the attachment of such property, the court shall, on the application of the purchaser, order delivery thereof to be made by putting the party to whom the house, land or other immovable property may have been sold or any person whom he may appoint to receive delivery on his behalf, in possession thereof and, if need be, by removing any person who may refuse to vacate the same.
52. If the purchaser of any immovable property sold in execution shall, notwithstanding the order of the court, be resisted or obtaining obstructed in obtaining possession of the property the provisions.
53. (1) Where the highest bidder at a sale is an alien for the purposes of the Land Use Act who were it not for the provisions of that Act would be held to be the purchaser, a certificate of title under section 50 of this Act shall not issue unless and until the approval of the Governor is signified in accordance with the terms of that Act.
- (2) Where the property sold in execution is a right of occupancy under the Land Use Act, a certificate of title under section 50 of this Act shall not issue unless and until

such consent to the alienation of the right as is required by that Act shall have had and obtained.

54. (1) In the application of sections 44 to 53 of this Act to the Northern States the following provisions shall apply-
- (a) where all the parties to a suit are Muslims, or
  - (b) where in any other suit the person applying for a writ of execution and the person against whose property the writ is to be directed are Muslims;
- the court to which application is made shall be guided by the principles of Islamic law relating to the levying of execution of immovable property and any writ issued against immovable property shall in such a case as aforesaid be issued subject to Islamic law and the person applying for such writ shall prove the Islamic law on the point whether or not such Islamic law is to his benefit.
- (2) For the purpose of this section any firm, body of persons or company, other than a company limited by shares, the members of which are all Muslims, shall be deemed to be a Muslim as if such firm, body of persons or company were an individual person.

#### **Part IV** **Judgement Summons**

55. (1) Where a judgment debtor makes default in payment of any sum recovered against him or any instalment thereof under a judgement, the judgement creditor may apply to any court for the issue of a summons, hereinafter called a judgment summons, requiring the judgment debtor to appear and be examined on oath as to his means, and the court shall, unless it sees good reason to the contrary, issue such a summons.
- (2) The application may be made-
- (a) where the judgement or order is against one person only, or where the application is for the issue of a judgment summons against only one of two or more persons jointly liable under the judgment or order, in the court for the division or district in which the debtor resides or carries on business; or
  - (b) where the application is for the issue of a judgment summons against two or more persons jointly liable under the judgment or order, in the court for the division or district in which any one of the joint debtors resides or carries on business.
- (3) The judgement creditor shall file a praecipe in the appropriate form containing the particulars required by that form, and thereupon a judgment summons shall be issued in such a form as is applicable to the case.
56. Where the name or address of any person as given in the praecipe differs from the name or address in the judgment or order both names and addresses shall be inserted in the judgment summons as follows-

*C.D. of (name and address as given in the praecipe) sued or suing as A.B. of*

*(name and address in the judgment or order).*

57. (1) Where a person entitled to enforce a judgment or order against a firm desires to issue a judgment summons against any person whom he alleges to be liable under the judgment or order he shall file a praecipe and affidavit in the required forms together with a copy of the affidavit which shall be served with the judgment summons.
- (2) If the person alleged to be liable does not appear on the day fixed for the hearing he shall be deemed to admit his liability to pay the amount due but if he appears and denies the liability the court may determine the question of liability on the evidence then before it or may order the issue of liability to be tried in such manner as it thinks fit.
58. Where it appears to the court that there is probable cause to believe the judgment debtor, for the purpose of avoiding examination, is about to leave the division or district in which he normally resides or carries on business, or where he does not appear in obedience to such summons, the court may in its discretion order that the judgment debtor be brought before the court and may issue a warrant for his arrest and for his custody in the debtors' prison until the day appointed for such examination when he shall be brought before the court under the said warrant unless sooner discharged by order of the court and if he is in custody the court may issue an order to the officer in charge of the prison in which he is detained to bring him before the court.
59. The court may enlarge the time for return to the order and may direct that the warrant shall only issue after a certain time and in the event of the continued refusal or neglect of the judgement debtor at that time to comply with the judgment summons.
60. (1) On the appearance of the judgement debtor before the court on the summons or warrant, he may be examined on oath, by or on behalf of the judgment creditor and by the court-
- (a) respecting his ability to pay the money directed to be paid and for the discovery of property applicable to such payment, and as to what debts are owing to him, and as to the disposal which he may have made of any property; and he shall be bound to produce on oath or otherwise, all books, papers and documents in his possession or power relating to property applicable to such payment; and
- (b) respecting the circumstances in which he contracted or incurred the debt or liability in respect of which the judgement was given and respecting the means of expectation he then had of paying or discharging the debt or liability.
- (2) Whether the judgement debtor appears or not the judgement creditor and all other witnesses whom the court thinks requisite may be examined on oath or otherwise respecting the matters aforesaid.
61. The court may, if it thinks fit, adjourn the examination from time to time, and require from the judgement debtor such security for his appearance at the adjourned hearing as seems fit, and in default of his finding security may commit him to prison, there to remain until the adjourned hearing, or may discharge him from custody.
62. The court may, upon such investigation as aforesaid, make an interim order for the protection of any property applicable or available in discharge of the judgment debt, as it shall think expedient.

- 63.** At the conclusion of the investigation the court may make such one or more of the orders following as the case may require:-
- (a) an order for the commitment of the judgment debtor to prison in accordance with the provisions of section 65 of this Act;
  - (b) an order for the attachment and sale of the judgment debtor's property;
  - (c) an order for the payment of money by instalments or otherwise by the judgment debtor, and
  - (d) an order for the discharge of the judgment debtor from prison.
- 64.** A court at the hearing of a cause, or at any adjournment thereof, shall have the same power of examining the parties and other persons touching the several things mentioned in section 60 of this Act, and of making an order for the protection of property, as if the defendant had appeared in answer to a judgment summons.

#### *Committal to Prison*

- 65. (1)** Subject to the provisions hereinafter contained, the court at the conclusion of such investigation as aforesaid, but not otherwise, may commit to prison, for any term not exceeding six weeks, any person who makes default in payment of any debt or instalment of any debt due from him in pursuance of any judgment or order of any court for the payment of any sum:
- Provided that such jurisdiction shall only be exercised where it is proved, to the satisfaction of the court, that the person making default either has, or has had since the date of the judgment or order, the means to pay the sum in respect of which he has made default.
- (2) Proof of the means of the person making default may be given in such manner as the court thinks just; and, for the purposes of such proof, the debtor and any witnesses may be summoned and examined upon oath.
  - (3) For the purposes of this section, the court may direct any debt due from any person in pursuance of any order or judgment of that or any other competent court to be paid by instalments, and may from time to time rescind or vary such order.
  - (4) Any person imprisoned under this section shall be discharged out of custody upon a certificate signed by the creditor at whose instance the debtor was imprisoned, or by any officer of the court, to the effect that such person has satisfied the debt or instalment of a debt in respect of which he was imprisoned, together with the prescribed costs, if any, or upon default by the judgment creditor in payment of the allowance, if any, for the subsistence of the judgment debtor.

#### *Misconduct of Judgment Debtor*

- 66.** If a party summoned as a judgment debtor shall not attend as required by the summons and shall not excuse his non-attendance to the satisfaction of the court or shall refuse to be sworn or to disclose the matters on which he shall be examined, or shall not answer to the satisfaction of the court, or if it appears to the court by an examination of a

judgment debtor or other evidence-

- (a) that the judgment debtor has then or has had since the judgment sufficient means to pay the money directed to be paid by him, or part thereof, and has made default in payment, and that such default is due to his refusal or willful neglect to pay on demand;
- (b) that with intent to defraud or delay his creditors or any of them he has made or suffered any gift, delivery or transfer of any property, or removed property from the jurisdiction of the court; or
- (c) that the debt or liability in respect of which the judgment has been given, has been contracted or incurred by him by fraud or false pretence or breach of trust committed by him, or by reason of any damages which he has been adjudged to pay on account of any assault or slander committed by him; or
- (d) that forbearance of the debt was obtained by him by fraud or false pretence; or
- (e) that the debt or liability was willfully contracted or incurred by him without his having at the same time a reasonable expectation of being able to pay or discharge it; or
- (f) that the judgment debtor under a judgment other than for the payment of money has then or has had since the judgment the power of complying with the judgment and has refused or neglected to do so, then and in any such case the court may, without prejudice to any of its powers in relation to judgment summonses hereinbefore conferred, issue a warrant for the arrest of such judgment debtor and his detention in custody, or for his detention if already in custody, until further order, or if it thinks fit may make an order calling upon such judgment debtor to show cause why he should not be punished for his misconduct.

- 67.** If such judgment debtor is arrested or in custody he shall be brought before the court on the first convenient opportunity, and shall then, or if an order to show cause as aforesaid has been made, he shall on appearing on the return-day of the order, have opportunity of showing cause why he should not be punished.
- 68.** If such judgment debtor does not show cause to the satisfaction of the court why he should not be punished, or if being ordered to show cause as aforesaid he does not attend the court and does not establish sufficient reason for not attending, the court may remand the judgment debtor to prison if he has been already arrested, or issue a warrant for his arrest and commitment as for a contempt of court.
- 69.** A person committed on account of any misconduct enumerated in section 66 of this Act may not be committed to prison for a longer period than one year in any event, or for a longer period than six months if the judgment be for payment of money not exceeding two hundred naira, or for a longer period than three months if the judgment be for payment of money not exceeding thirty naira.
- 70.** The court may in its discretion direct that any judgment debtor ordered to be imprisoned on account of any misconduct as aforesaid shall be employed in work within the prison during any period of such imprisonment.
- 71.** The work shall be of such nature as may be specified by regulations made under the Prisons Act.

72. If any person refuses or neglects to comply with an order made against him, other than for payment of money, the court, instead of dealing with him as a judgment debtor guilty of the misconduct defined in paragraph (f) of section 66 of this Act, may in order that he be committed to prison and detained in custody until he has obeyed the order in all things that are performed and given such security as the court thinks fit to obey the other parts of the order, if any, at the future times thereby appointed, or in case of his no longer having the power to obey the order then until he has been imprisoned for such time or until he has paid such fine as the court directs.
73. Where a judgment debtor has been imprisoned on account of any misconduct enumerated in section 66 of payment of the judgment debt, together with the prescribed costs, if any, or upon the request of the judgment creditor, or upon default by the judgment creditor in payment of the allowance, if any, for the subsistence of the judgment debtor, the court for his discharge, to take effect either immediately or after he has been imprisoned for such portion of the term of imprisonment ordered as the court in its discretion may think fit to appoint, and the court may also make any order respecting the expenses of his imprisonment that may be necessary and just.
74. Any person imprisoned under the provisions of section 65 or 66 of this Act may apply to the court for his discharge. The application shall be accompanied by a full statement and account of all property of whatever nature belonging to the applicant, whether in expectancy or in possession, and whether held exclusively by himself or jointly with others, or by others in trust for him, excepting the necessary wearing apparel of himself and his family, and the necessary implements of his trade, if any, to the value of ten naira, and of the places respectively where such property is to be found. The application shall be verified by oath or affidavit.
75. (1) On such application being made the court shall cause the judgment creditor to be furnished with a copy of the statement and account of the judgment debtor's property and shall fix a reasonable time within which the judgment creditor may cause the whole or any part of such property to be attached and shall fix a time for examining and hearing the parties.
- (2) If the court is satisfied upon such inquiry, wherein the onus of proof shall be upon the party applying for discharge, that the judgment debtor has made a full surrender and disclosure of his property, and that he is unable because of unavoidable misfortune to satisfy the judgment, and, where he has been imprisoned under section 65 of this Act, that he has not been guilty of any misconduct enumerated in section 66 of this Act, and that he ought to be discharged, the court may make an order for the liberation of the judgment debtor:
- Provided that if it shall subsequently be shown to the satisfaction of the court that the debtor has not made a full disclosure the debtor shall upon the order of the court be recommitted to prison-
- (a) where he has previously been imprisoned under section 65 of this Act, for such time not exceeding six weeks as may be specified by the court; and
- (b) where he has previously been committed on account of any misconduct enumerated in section 66 of this Act, for such time as may be specified by the court not exceeding the maximum period for which he might have been committed in the first instance.
76. No imprisonment under this Act shall operate as a satisfaction or extinguishment of any debt, demand or cause of action, or deprive or extinguish any person of any right to

take out execution against the movable or immovable property of the person imprisoned in the same manner as if such imprisonment had not taken place.

77. No imprisonment under this Act shall prevent a judgment debtor from being again imprisoned for any act of willful disobedience or other default or misconduct rendering him liable to be imprisoned, occurring or continuing after his imprisonment or release; but except in such cases, a party who has once been released from imprisonment shall not be imprisoned again upon the same judgment.

*Subsistence of Debtor Prisoners*

78. Where the judgment debtor is committed to prison under this Act, the court shall fix whatever monthly allowance it shall think sufficient for his subsistence, not exceeding forty-five kobo per day, which shall, subject to the provisions of section 81 of this Act, be paid by the judgement creditor by equal monthly instalments in advance before the first day of each month to the registrar, the first payment to be made before the order or warrant of commitment is issued, for such portion of the current month as may remain unexpired:

Provided that if it shall be proved that any judgment debtor has sufficient means for maintaining himself, it shall be competent for the court, after hearing such judgment debtor, to order that no subsistence money be allowed.

79. (1) In case of the serious illness of any person imprisoned under this Act the court may, on the certificate of a medical officer, make an order for the removal of such person to a Government hospital, and for his treatment there under custody; the period of such person's stay in hospital shall be counted as part of his term of imprisonment and his subsistence allowance shall be paid unless the court shall see fit in either case to order otherwise.

- (2) The court may order that any hospital charges in excess of the subsistence allowance ordered to be paid shall be borne by the Government or the judgment creditor.

80. Sums disbursed by an execution creditor for the subsistence of a judgment debtor in prison or hospital shall be added to the costs of the suit and shall be recoverable by the attachment and sale of the property of the judgment debtor but he shall not be detained in custody or arrested on account of any sums so disbursed.

81. (1) In every case where a person is committed to prison on account of any misconduct enumerated in section 66 of this Act as well as in every case of a person committed for contempt of court, the court may direct that the expenses of the conveyance of such person to prison and of his maintenance during his imprisonment shall be defrayed in the first instance by the principal officer of the Treasury of the State or, in the case of the Federal Capital Territory, Abuja, the Accountant-General of the Federation and if the court considers that it is expedient in the interests of justice that the expenses shall be so defrayed, the court shall so direct.

- (2) The principal officer of the Treasury of the State or, in the case of the Federal Capital Territory, Abuja, the Accountant-General of the Federation shall in all such cases be entitled to recover the sums so disbursed by him by attachment and sale of the property of the person imprisoned or he may, if the court so directs, recover such sums from the judgment creditor.



- (3) In case the court shall not direct the said expenses to be defrayed by the principal officer of the Treasury of the State or, in the case of the Federal Capital Territory, Abuja, the Accountant- General of the Federation the same shall be defrayed by the judgment creditor.
- (4) The judgment creditor may in all cases recover all sums disbursed by him for expenses as aforesaid from the judgment debtor by attachment and sale of the property of the judgment debtor.

#### *Sequestration*

- 82.** In case the person against whom an order or warrant of arrest, commitment, or imprisonment issues is not and cannot be found, or is taken and detained in custody without obeying the judgment, the court may make an order that a writ of sequestration do issue against his property, and such writ shall be issued and executed in the prescribed manner.

#### **Part V**

#### **Attachment of debts by garnishee order**

- 83.** (1) The court may, upon the ex parte application of any person who is entitled to the benefit of a judgement for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment and upon affidavit by the applicant or his legal practitioner that judgment has been recovered and that it is still unsatisfied and to what amount and that any other person is indebted to such debtor and is within the State, order that debts owing from such third person, hereinafter called the garnishee, to such debtor shall be attached to satisfy the judgment or order, together with the costs of the garnishee proceedings and by the same or any subsequent order it may be ordered that the garnishee shall appear before the court to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor or so much thereof as may be sufficient to satisfy the judgment or order together with costs aforesaid.
- (2) At least fourteen days before the day of hearing a copy of the order nisi shall be served upon the garnishee and on the judgment debtor.
- 84.** (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.
- (2) In such cases the order of notice must be served on such public officer or on the registrar of the court, 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.

85. Service of an order that a debt due or accruing to the judgment debtor shall be attached, or notice thereof to the garnishee, in such manner as the court may direct, shall bind such debt in his hands.
86. If the garnishee does not within the prescribed time pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, together with the costs of the garnishee proceedings, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, the court upon proof of service may order execution to issue, and it may issue accordingly without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order, together with the costs of the garnishee proceedings.
87. If the garnishee appears and disputes his liability the court, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in any proceedings may be tried or determined, or may refer the matter to a referee.
88. Whenever in any proceedings to obtain an attachment of a debt it is suggested by the garnishee that the debt sought to be attached belongs to some third person or that any third person has a lien or charge upon it, the court may order such third person to appear and state the nature and particulars of his claim upon such debt.
89. If the third person as described in the last preceding section does not appear, the court on proof of service of a copy of the order may proceed to make an order as if such person had appeared.
90. Upon the appearance of such third person, after hearing his allegations and those of any other person whom the court may order to appear, the court may order execution to issue to levy the amount due from the garnishee, or any issue or question to be tried and determined, and may bar the claim of such third person, or may make such other order, upon such terms with respect to any lien or charge or otherwise, as the court shall think just.
91. Payment made by or execution levied upon a garnishee under any such proceedings shall be a valid discharge to him against the debtor liable under a judgment or order, to the amount paid or levied, even although such proceeding may be set aside or the judgment or order reversed.
92. After an attachment shall have been made by actual seizure or by written order as aforesaid and in case of attachment by written order, after it shall have been duly intimated and made known in manner aforesaid, any alienation without leave of the court of the property attached, whether by sale, gift or otherwise and any payment of any debt or debts or dividends or shares to the judgment debtor during the continuance of the attachment shall be null and void.

## Part VI

## Forms and Rules

### *Forms*

93. (1) Subject to the express provisions, if any, of the Rules, the forms contained in the First Schedule to this Act may, in accordance with any instructions contained in the said forms and with such variations as the circumstances of the particular case may require, be used in the cases to which they apply and, when so used, shall be good and sufficient in law.
- (2) The forms in the First Schedule may be added to, repealed, replaced or varied by rules of court in all respects as if they had originally been so made.

### *Rules*

94. The Chief Judge of the Federal Capital Territory, Abuja, with the approval of the President, and the Chief Judge of a State, with the approval of the Governor, may make rules of court in respect of any or all of the following matters:-
- (a) the duties of bailiffs;
  - (b) the procedure to be adopted by bailiffs and others on the receipt of money paid or received at a sale on execution or otherwise in respect of process of execution and the accounting therefore;
  - (c) the fees and allowances, if any, to be paid to, or for the use of the services of bailiffs and other officers of the court;
  - (d) the fees to be paid in respect of any application or the filing of any document or in respect of anything done or furnished under this evidence;
  - (e) the conditions precedent to the issue of any process;
  - (f) the issue of process to or against any person or class of persons;
  - (g) anything to be done by any person in respect of the issue or execution of process;
  - (h) the method of attaching any property;
  - (i) the enforcement of judgments not for the payment of money;
  - (j) the procedure in execution against immovable property;
  - (k) the entertainment and adjudication of claims to property attached or sold in execution;
  - (l) the custody or disposal of property attached; (m) the appointment of managers or receivers over attached or sequestered property;
  - (n) the procedure on sale in execution of writs and the persons by whom such sales may be conducted;
  - (o) the method of transfer of property, movable or immovable, shares, securities and other chattels on sales in execution of writs;

- (p) the circumstances in which proceedings in process may be transferred from one court in a division or district to another court in the same division or district or to a court in another division or district;
- (q) the procedure to be followed in the High Court upon an application of a judgment creditor in a magistrate's court for a writ of execution in respect of immovable property;
- (r) prescribing anything or any person requires by Parts III, IV, V and VI of this Act to be prescribed, and
- (s) generally for giving effect to the provisions and intentions of Parts III, IV, V and VI of this Act and prescribing and regulating procedure thereunder.

### **Part VII**

#### **Service of the Process and Enforcement of the Judgements of Court of the Federal Capital Territory, Abuja and the States throughout Nigeria.**

95. (1) In this Part unless the context otherwise requires-

"Capital Territory" means the Federal Capital Territory, Abuja;

"court" means a court to which Parts III, IV, V, and VI apply;

"judgment" includes any judgment, decree or order given or made by a court in a suit whereby any sum of money is made payable or any person is required to do or not to do any act or thing other than payment of money;

"writ of summons" includes any writ or process by which a suit is commenced or of which the object is to require the appearance of any person against whom relief is sought in a suit or who is interested in resisting such relief.

#### *Service of Process*

96. (1) A writ of summons issued out of or requiring the defendant to appear at any court of a State or the Capital Territory may be served on the defendant in any other State or the Capital Territory.

(2) Such service may, subject to any rules of court which may be made under this Act, be effected in the same manner as if the writ was served on the defendant in the State or the Capital Territory in which the writ was issued.

97. Every writ of summons for service under this Part out of the State or the Capital Territory in which it was issued shall, in addition to any other endorsement or notice required by the law of such State or the Capital Territory, have endorsed thereon a notice to the following effect (that is to say)-

"This summons (or as the case may be) is to be served out of the ..... State (or as the case may be) ..... and in the ..... State (or as the case may be)."

- 98.** A writ of summons for service out of the State or the Capital Territory in which it was issued may be issued as a concurrent writ with one for service within such State or the Capital Territory and shall in that case be marked as concurrent.
- 99.** The period specified in a writ of summons for service under this Part as the period within which a defendant is required to answer before the court to the writ of summons shall be not less than thirty days after service of the writ has been effected, or if a longer period is prescribed by the rules of the court within which the writ of summons is issued, not less than that longer period.
- 100.** Any defendant who has been served under this Part with a writ of summons may apply to the court within which the writ was issued for an order compelling the plaintiff to give security for costs, and upon such application the court may make the order.
- 101.** When no appearance is made by a defendant to a writ of summons served on him under this Part, if it is made to appear to the court from which the writ was issued-
- (a) that the subject matter of the suit, so far as it concerns such defendant, is-
    - (i) land or other property situate or being in the State or the Capital Territory in which the writ was issued; or
    - (ii) shares or stock of a corporation or company having its principal place of business within that State or the Capital Territory; or
    - (iii) any deed, will, document or thing affecting any such land, share, stock or property; or
  - (b) that any contract is respect of which relief is sought in the suit against such defendant by way of enforcing, rescinding, dissolving, annulling or otherwise affecting such contract, or by way of recovering damages or other remedy against such defendant for a breach thereof, was made or entered into within that State or the Capital Territory; or
  - (c) that the relief sought against the defendant is in respect of a breach, within that State or the Capital Territory, of a contract wherever made; or
  - (d) that any act or thing sought to be restrained or removed or for which damages are sought to be recovered, was done or is to be done or is situate within that State or the Capital Territory; or
  - (e) that at the time when the liability sought to be enforced against the defendant arose he was within that State or the Capital Territory; or
  - (f) in a matrimonial cause that the domicile of the person against whom that relief is sought is within that State or the Capital Territory, and if it is also made to appear to such court
  - (g) that the writ was personally served on the defendant, or in the case of a corporation served on its principal officer or manager or secretary within the State or the Capital Territory in which service is effected; or
  - (h) that reasonable efforts were made to effect personal service thereof on the defendant, and that it came to his knowledge or in the case of a corporation that it came to the knowledge of such officer as aforesaid (in which case it shall be deemed to have been served on the defendant), such court may on the

application of the plaintiff order from time to time that the plaintiff shall be at liberty to proceed in the suit in such manner and subject to such conditions as the court may deem fit and thereupon the plaintiff may proceed in the suit against such defendant accordingly.

- (2) Any such order may be rescinded or set aside or amended on the application of the defendant.
- 102.** This Part of this Act does not confer on any court jurisdiction to hear or determine any suit which it would not have jurisdiction to hear or determine if the writ of summons had been served within the State or the Capital Territory in which the writ was issued.
- 103. (1)** When any process issued by a court of a State or part of the Federation other than a warrant of arrest or commitment, is required to be served on any person, such process may be served on such person in any other State or the Capital Territory.
- (2) Such service may, subject to any rules of court which may be made under this Part, be effected in the same way, and shall have the same force and effect, as if the service were effected in the State or the Capital Territory in which the process was issued.
  - (3) Thereupon all such proceedings may be taken as if the process had been served in the State or the Capital Territory in which it was issued.
  - (4) A warrant of arrest or commitment issued by a court of a State or the Capital Territory in the exercise of its civil jurisdiction may be executed in another State or the Capital Territory in the manner provided in Chapter XII of the Criminal Procedure Act in the case of warrants for the apprehension of persons charged with an offence.
  - (5) This section does not apply to a writ of summons or any process issued in accordance with part XIII of the Evidence Act.

#### *Enforcement of Judgments*

- 104.** Any person in whose favour a judgment is given or made in a court of any State or the Capital Territory may obtain from the registrar or other proper officer of such court a certificate of such judgment in the form and containing the particulars set forth in the Second Schedule or as near thereto as the circumstances will permit, which certificate such officer is hereby required to grant under his hand and the seal of such court.
- 105. (1)** Upon production of such certificate to the registrar or other proper officer of any court of like jurisdiction in any other State or the Capital Territory such officer shall forthwith register the same by entering the particulars thereof in a book to be kept by such officer and to be called "The Nigerian Register of Judgment".
- (2) From the date of registration the certificate shall be 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, and the like proceedings may be taken upon the certificate as if the judgment had been a judgment of that court.
  - (3) For the purpose of this section-
    - (a) the High Courts (including any court deemed to be a High Court) of the

several States and the Capital Territory are courts of like jurisdiction to one another;

- (b) the magistrates' courts exercising jurisdiction in the several States and the Capital Territory are of like jurisdiction to one another.
- 106.** (1) The court in which any such certificate of a judgment has been registered may, upon being satisfied that the registration of the judgment was reasonably justified under the circumstances, order that the judgment creditor's costs of registration and other proceedings under this Part, to an amount to be assessed by the court, but not exceeding the amount prescribed be paid by the judgment debtor to the judgment creditor.
- (2) Any such order shall be deemed to be incorporated with the of certificate, and the amount payable thereunder to be payable under the certificate.
- 107.** No process shall be issued upon such certificate unless an affidavit is first filed in the court out of which it is intended to issue such process made by the judgment creditor or by some other person cognizant of the facts of the case, stating-
- (a) that the amount for which process is proposed to be issued is actually due and unpaid; or
  - (b) that an act ordered to be done remains undone; or
  - (c) that the person ordered to forebear from doing an act has disobeyed the order, and no process shall be issued for a larger amount than that sworn to.
- 108.** The court in which any such certificate of a judgment has been registered shall, in respect of the issue of process upon the certificate and the enforcement of the judgment, have the same control and jurisdiction over the judgment as if the judgment were a judgment of such court.
- 109.** (1) The court in which any such certificate of a judgment has been registered may, on the application of the judgment debtor order a stay of proceedings on such certificate.
- (2) Such order may be made on such terms as to giving security, or as to making application to the court by which the judgment was given or made to set aside the same or otherwise as to the court may seem fit.
- 110.** (1) When-
- (a) a certificate of judgment is registered in any court; or
  - (b) any process is issued in any court upon such certificate; or
  - (c) satisfaction of the judgment either in whole or in part is entered in any court upon any such certificate, the registrar or other proper officer of that court shall forthwith notify the same in writing under the seal of the court to the registrar or other proper officer of the court in which the judgment was given or made.
- (2) When any judgment whereof a certificate has been registered in any court has been satisfied in whole or in part, the registrar or other proper officer of the court in which the judgment was given or made shall forthwith, upon such satisfaction being made or notified as the case may be, enter such satisfaction upon the

judgment and notify such satisfaction in writing under the seal of the court to the registrar or other proper officer of every other court in which a certificate of the judgment has been registered and such satisfaction shall thereupon be entered upon every such certificate.

- 111.** The Chief Justice of Nigeria may make rules with respect to this Part of this Act including the making of rules of court for prescribing-
- (a) the practice and procedure in connection with the execution and enforcement by the courts of a State or the Capital Territory of the process and judgments of the courts of other State and the Capital Territory;
  - (b) the practice and procedure in connection with the service of the process of the courts of a State or the Capital Territory under this Part;
  - (c) the fees to be paid in connection with the service of the process of the courts of a State or the Capital Territory under this Part;
  - (d) the fees to be paid in connection with the execution and enforcement under this Part by courts of a State or the Capital Territory of the process and judgments of the courts of other States and the Capital Territory;
  - (e) the costs to be allowed to a person upon the execution or enforcement under this Part by the courts of a State or the Capital Territory of a judgment or other process of another State or the Capital Territory; and
  - (f) the manner of recovery of such fees or costs.
- 112.** (1) A judgment of the former Supreme Court which was given or made before the commencement of this Part shall be deemed for the purposes of this Act to be a judgment of the High Court of that State or the Capital Territory in which the judicial division in which it was given or made (as delimited on the date of the judgment) is included and the like proceedings may be taken under any of the provisions of this Act upon such judgment as if the judgment had been a judgment of the High Court of that State or the Capital Territory.
- (2) A judgment of a magistrate's court which was given or made before the commencement of this Part shall be deemed to be judgment of a magistrate's Court of that State or the Capital Territory in which the magisterial district in which it was given or made (as delimited at the date of the judgment) is included and the like proceedings may be taken under any of the provisions of this Act upon such judgment as if the judgment had been a judgment of a magistrate's court of that State or the Capital Territory.
- (3) Where a judicial division or magisterial district in which a judgment to which subsection (1) or (2) of this section applies was given or made is included in more than one State or in both a State and the Capital Territory the judgment shall be deemed to be a judgment of the High Court or magistrate's court, as the case may be, of the State or the Capital Territory in which the place shown on the record of the proceedings as the place of the holding of the court is situate and the provisions of subsection (1) or (2) of this section shall apply accordingly.
- (4) Where, in respect of a judgment deemed by this section to be a judgment of a court of a State or the Capital Territory-
- (a) a writ of execution has been transferred before the commencement of this Part under the provisions of section 37 of this Act to a division of the High



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