

Garnishee Proceedings/Order: A Guide to the Operation of the Nigeria Police Force for Better Law Enforcement in Nigeria

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Abstract

In a democratic society where the philosophy of rule of law flourish, all citizens and institutions alike within such a country must be accountable and responsible at the event of any breach to the fundamental rights of any innocent citizen in account of their erroneous omission or commission. Actions such as unlawful arrest, detention and extrajudicial killings among others, are not only condemnable, reprehensible but also actionable against the culprit(s) and upon successful proven of same, it could warrant to conviction, awards of damages, and public apology as the case may be. Thus, members of the Nigeria Police Force and indeed all other security agencies needs to be guided by the numerous legal framework and rules of engagement in discharging their statutory responsibilities to avoid unnecessary litigation. Accordingly, where there is any valid court judgment in relation to enforcement of fundamental rights, and the judgment debtor fails to comply with the court order, the court is at liberty when moved by the judgment creditor to use the available power at its disposal to ensure the enforcement of its judgment against the judgment debtor.

Keywords: *Unlawful Arrest, Detention, Extrajudicial Killing(s), Garnishee Proceedings/Order*

1. Introduction

In a well establish political society where the philosophy of rule of law flourish, all citizens and institutions alike within such a country must be accountable and responsible at the event of any breach to the fundamental rights of any innocent citizen. Actions such as unlawful arrest, detention and extrajudicial killings among others, are not only condemnable, reprehensible but also actionable against the culprit(s) and upon successful proven of same, it could warrant to conviction, awards of damages, and public apology as the case may be. The work becomes necessary considering the unnecessary Fundamental Human Rights litigation instituted daily against the Nigeria Police Force; as well as the reoccurring nature of the extrajudicial killing(s) of the innocent citizens in the country from the ‘Apo Six killing’, the EndSars Toll Gate killing(s) and indeed the gruesome murder of Barr Bolanle Raheem.

Nigeria as a nation among the international community, the most populated in Africa cannot be alienated from the global changes be in economic, social, technological, as well as democratic transformation which gave birth to fundamental human rights of the citizenry. These changes most especially the latter cannot be meaningful without effective and responsive security network in place in which Police as an organ of the Government top the list. However, in the course of discharging their statutory responsibilities, members of the Nigeria Police Force, consciously or otherwise, negligently or accidentally due to human nature, omit or commit certain irregularities

which in democratic setting, with human rights in place, could warrants court action seeking for redress. However, one may be tempted to ask, what are such actions or inactions that could result into court actions against the Police.

2. Causes of the Proceedings

It is worthy to stress that there are variety of factors prompting legal actions against the members of the Nigeria Police Force or other security agencies, however, the most prominent among them are:

- ❖ Unlawful arrest and Detention; and
- ❖ Extrajudicial Killing(s)

2.1 Unlawful arrest and detention

In a well establish political society where the philosophy of rule of law flourish, all citizens and institutions within such a country, state, or community are and must be accountable to the same law of the land including the executives, legislatures, judicial officials, Police, Military and indeed all citizens and non-citizens alike that resides within the geographical location or boundary of that particular country. It is therefore instructive that, abuse of power, arbitrary arrest and detention by members of the security forces, most especially the Nigeria Police as the focal point of this paper are guided and prohibited by the extant laws from abusing their power against the innocent citizens. The Nigerian Police Force has been establish as an agency under the Executive arm of the government pursuant to the provisions of **Section 214 (1)** of the Constitution¹ with a view to discharging such duties and responsibilities as provided in **Section 3 (1) (b)** of the Nigeria Police Act,² which provide thus: The Nigeria Police Shall have ... '*such powers and duties and carry out such responsibilities as are conferred on it under this Act or any other law*'.

Accordingly, the provisions of **Section 4** of the Nigeria Police Act,³ inundates the Nigeria Police to carry out such duties thus:

Section.4 of the Act provides: The Police Force Shall:

- a) prevent and detect crimes, and protect the rights and freedom of every person in Nigeria as provided in the Constitution, African Charter on Human and people's Rights and any other law;*
- b) maintain public safety, law and order;*
- c) protect the lives and property of all persons in Nigeria;*
- d) enforce all laws and regulations without any prejudice to the enabling Acts of other security agencies;*
- e) discharge such duties within and outside Nigeria as may be required of it under this Act or any other laws;*
- f) collaborate with other agencies to take any necessary action and provide the required assistance or support to persons in distress, including victims of road accident, fire disaster, earthquakes and floods;*
- g) facilitate the free passage and movement on highways, roads and streets open to the public; and*

¹ Constitution of the Federal Republic of Nigeria (1999), as amended.

² The Nigeria Police Act, 2020.

³ Ibid.

- h) adopt community partnership in the discharge of its responsibilities under this Act or under any other law; and*
- i) vet and approve the registration of private detective schools and private investigation outfits.*

In order to carry out the aforementioned enumerated and some presume duties, it was only pertinent that certain powers are provided to such agency or members of such organization with a view to enabling them perform their statutory responsibilities. Thus, **Section 38 (1)** of the Nigeria Police Act,⁴ empowers the Police Officer(s) to arrest a person with or without warrant upon reasonable suspicion of committing an offence or where such a person is committing an offence in his presence, among others. This position has been anchored by the court in the case *EKWENUGO VS. F.R.N*⁵ where the court held that: *No citizen's right is absolute. A citizen's right or liberty may be impaired temporarily in order to prevent him from committing an offence or if there is a reasonable suspicion that he has committed an offence.*

However, arrest is said to be reasonable where there is probable cause of action in the eye of the law to so act, or where a reasonable man would have believed there was probable cause, then the arrest would be deemed to be lawful; otherwise, the arrest may be deemed unlawful. In order not to create speculation, the court has laid down a test to be considered for 'reasonable suspicion' in the circumstance. The test of what is reasonable belief has been explained in the case of *C.O.P ONDO STATE V. OBOLO*⁶ The Court of Appeal, per Salami J.C.A (as he then was) stressed thus:-

it is not what the policeman himself considered reasonable, but whether the facts within the knowledge of the policeman at the time of the arrest disclosed circumstances from which it could be reasonably inferred that the Appellant had committed an offence.

Similarly, a Police officer is prohibited from arbitrarily arresting an innocent person merely to settle a score or base on purely civil matter, as such action would amount to breaching his/her fundamental right to personal liberty. This position has been dully declared by the provisions of the Constitution,⁷ thus: *Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save... and in accordance with a procedure permitted by law...'. Therefore, an unlawful arrest is the act of arresting someone without proper and legal justification, or lawfully recognized cause of action*

Accordingly, where a person has been lawfully taken into custody, such a person must be investigated and charge to court within the constitutionally stipulated period to prevent unlawful detention. That, the stipulated period is provided by the provisions **Section 35 (5)** of the Constitution⁸ which provides thus:

In subsection (4) of this section, the expression "a reasonable time" means;

a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and

⁴ Ibid.

⁵ (2001) (PT. 708) at 185.

⁶ (1989) 5 NWLR Pt. 120, P. 130 CA

⁷ CFRN, (1999) as amended, S.35 (1).

⁸ CFRN (1999) as amended.

b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

However, where a person has been unlawfully arrested or illegally detained, such person is entitled to enforce the encroachment to his right to personal liberty and upon successfully proving such matter before the court, he may be entitled to compensation and public apology as in line with the provisions of **Section 35 (6)** of the Constitution,⁹ which provides:

Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.

That, it is a trite law that a police officer or any security personnel who while discharging his statutory duties allow himself to be used in contravening the fundamental rights of other innocent person(s), such officer should be ready to face the consequences of his action, as it is crystal clear based on decided plethora of case that, such violations once presented before the court and successfully proven, may attract court declaration(s), awards of damages and possible calls for public apology, as declared by the Court of Appeal in the case of *ANOGWIE AND ORS V ODOM AND ORS*¹⁰, where **F. O. OHO, J.C.A; (of Bless Memory) held that:**

Those who feel called upon to deprive other person of their personal liberty in the discharge of what they consider their duty should strictly observe the terms and rule of law....to make matters rather worse, the invitation of the police to intervene in a matter that is purely civil in nature cannot be justified under any circumstances. The duties of the Police as provided under Section 4 of the POLICE ACT, Cap 359 LFN 1990 does not include the settlement of civil disputes or the collection of debts or enforcement of civil agreements between parties. To mere fact that the police are usually invited into just about every matter under the sun is no justification to get the police involved in the resolution of civil disputes. The police have recently held itself out as a responsible law enforcement organization should be seen to live up to its billings in quickly to turning down matters not statutorily assigned to it so as to avoid embarrassments of matters of this nature. There are usually dire consequences at every turn of event, in the event of things of this nature...'

It was equally held by the court in the case of *GUSAU & ORS VS UMEZURUIKE*¹¹ where Court of Appeal held that:

'...that detention, no matter how short, can lie a breach of fundamental right. But that can only be so if the detention is adjudged wrongful or unlawful in the first place; that is, if there

⁹ Ibid.

¹⁰ (OW 337 of 2014) [2016] NGCA 90 (23 March 2016).

¹¹ (2012) LPELR - 8000 (CA).

is no legal foundation to base the arrest and/or detention of the applicant.

Accordingly, in the case of ***OZIDE & ORS. VS EWUZIE & ORS***¹² it was held that: ‘...***the law is trite, that damages in compensation, legally and naturally follow every act of violation of a citizen's fundamental right.***

Based on the above therefore, members of the Nigeria Police Force and indeed other security agencies need to be accordingly guided in their efforts towards discharge of their statutory responsibility not to trample into the rights of innocent citizens.

2.2 Extrajudicial killing(s)

The phrase ‘extrajudicial killing’ is a misnomer, since every killing outside of the judicial process of the law is illegal. The act of killing one another is a crime, as homicide or murder is equally considered as extrajudicial killing. Extrajudicial killing has been described as a deliberated killing not authorized by a laid down process of the law or resulting from a valid judgment pronounced by a regularly and constituted court of law.¹³

However, conventionally, the term extra judicial killing usually refers to the killing of a person by governmental authorities without the sanction of any judicial proceeding or any legal process. It is an act usually carried out by the state actors or agencies like the armed forces and police. If any killing occurs by the law enforcement agents of a country outside the authority of the court will be called and described as extrajudicial killing.¹⁴

In Nigeria, the position of the law is emphatically clear that no person shall be deprived of his life intentionally save as provided by the extant provisions of the law of the land as provided by Section 35(1) of the Constitution¹⁵ that:

Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

Therefore, any attempt or actual commission of such act is a violation of such person’s right to life as enshrine by the provisions of the constitution and therefore enforceable. That, members of the Nigeria Police force and indeed all other security agents should refrain from any temptation either personally or induced by any other external forces from such illegal act, as the ‘Apo Six’ saga should serve as a big lesson, and which is still fresh in memory, where Ezekiel Achejene and Emmanuel Baba after being dismissed from service were convicted of murdering two of the Apo Six young civilians who were shot dead in 2005, while three other police officers were acquitted for lack of evidence by the trial High Court in Abuja.¹⁶

In order the ensure the sanctity and obedient to the law of the land, the then Federal Government of Nigeria offered public apology on behalf of the Police and paid \$20,300 (£16,700) in

¹² (2015) LPELR - 24482 CA,

¹³ Law Insider Online Dictionary, accessed at <<https://www.lawinsider.com/dictionary/extrajudicial-killing>>, visited on the 16th Dec, 2022.

¹⁴ Ibid.

¹⁵ CFRN (1999) as amended.

¹⁶ BBC News, ‘Apo Six murders: Nigeria Sentences Two Policemen to death’, 9 March 2017, accessed at <<https://www.bbc.com/news/world-africa-39219494>>, visited on the 16th Dec, 2022.

compensation to each of the families.¹⁷ This very incident and other very recent incidences should and must serve as lessons to some overzealous and happy trigger young Police Officers if and only if they want maintain good career in the service.

However, where the aggrieved parties while enforcing their constitutional rights, and upon successful proving their case(s), may lead to award of damages to the plaintiff against the institution of the Police Force, and as long as the damages so awarded by the court remain unpaid and no meritorious appeal to set it aside, it becomes **Judgement debt**.

3. *Garnishee Proceedings/Order*

Garnishee proceeding is a judicial process of executing or enforcing monetary judgment by the court in favor of a judgment creditor, against the judgment debtor, through the application of various legal instruments available at the disposal of the court. Therefore, where judgment debt remains un liquidated by the judgment debtor, the court is empowered when moved by the judgment creditor to invoke any measure provided in the provisions of **Section 93 of the Sheriff and Civil Processes Act**,¹⁸ toward enforcing its judgment. Thus, garnishee proceedings involve two main orders; the *garnishee order nisi* and the *garnishee order absolute*. The order *nisi* is an initial, temporary order that directs the *garnishee* (the third party holding the judgment debtor's money) to appear in court and show cause why an order should not be made. The order absolute is the final and conclusive order, instructing the *garnishee* to pay the judgment creditor the debt owed by the judgment debtor, either the full amount or enough to satisfy the judgment debt.

It is a separate and distinct action or preceding between the judgment creditor and the person or body holding in custody the assets of the judgment debtor (third party), where the judgment creditor seek the attachment or seizure of such property or assets and as soon as the order is granted by the court, such person or body is referred to or called as *garnishee*.¹⁹ It is equally pertinent to stress that in a garnishee proceeding, the judgment debtor is not a party, notwithstanding the fact that he was a party in the suit where the debt was awarded against him, as the rational was to avoid unnecessary intervention by the judgment debtor as held by the court in the case of ***FBN PLC V. YEGWA***.²⁰

Thus, where a court has been inundated with the facts deposed to by the judgment creditor through an *ex parte* application as in line with provisions of the Act,²¹ that a judgment debtor has certain property or assets in the possession of a third party, the court may be moved to grant '*garnishee order nisi*' attaching the debt due or accruing to the judgment debtor from such person or body towards the liquidation of the judgment debtor and may subsequently grant order absolute if no any reasonable and legal steps are exploited in the circumstance.

As such, where a judgment creditor against the Police apply for a writ of attachment,²² upon a prove of noncompliance by the Police to liquidate a judgment debt, and no any other action taken for setting aside or stay of execution of such judgment as in line with the provisions of the Act,²³

¹⁷ Ibid.

¹⁸ Sheriff and Civil Processes Act, LFN, (SCPA) (2004).

¹⁹ K. EzenwaIzimah, 'Garnishee Proceedings and Enforcement of Judgment debts in Nigeria' *Nigeria Lawyers*(2018;),accessed at <<https://thenigerialawyer.com/garnishee-proceedings-and-enforcement-of-judgment-debts-in-nigeria-by-kingsley-ezenwaizimah-esq/>> visited on the 12th Dec, 2022.

²⁰ (2023) 4 NWLR (Pt. 1874) SC 323 at pp. 340-341

²¹ SCPA, S. 83.

²² Ibid, S. 85

²³ Ibid, S. 109.

the court may be left with no option than to grant the order against any sum identified to be the property or assets of the Police in possession of a third party within the jurisdiction of the court. This is done in line with the provisions of attachment of Earnings Act of 1971, as amended, and by so doing, the court may direct the liquidation of the judgment debt from that source, which is called the *garnishee* order.

However, where a court decided to issue freezing injunction in accordance with the provisions of the Civil Procedure Rules,²⁴ the judgment debtor is only restrain from having access or removing such assets from the jurisdiction of the court upon which the order has been placed, pending the liquidation of the judgment debt, the order hitherto the implementation of the Civil Procedure Rules of 1998 is known as ‘*Mareva*’ injunction.

Even though it is one of the basic principle in commencing a garnishee proceedings for the applicant (judgment creditor) to obtained the consent of the Attorney General of the Federation or of a state, where the garnishee is a public officer, as in line with the provisions of Section 84 of the Act²⁵ and many judicial authorities including the case of *CBN V UMAR*²⁶, at least where effective legal representation is expected, nonetheless, the leadership of the Nigeria Police Force and other enforcement agencies needs to take positive, effective and proactive measures with a view to preventing such preventable instances.

Thus, the word ‘*Garnish*’ has therefore been defined as ‘**to warn**’ while ‘*Garnishee*’ means **to warn a person not to pay a debt to anyone other than third party who has obtained judgment against the debtors’ own creditor.**²⁷ In the same vein, *garnishee* proceeding has been described as;

*‘...a procedure by which a judgment creditor may obtain a court order against a third party who owes money, or holds money for, the judgment debtor. It is usually obtained against a bank, requiring the bank to pay money held in the account of the debtor to the creditor.’*²⁸

The aforementioned definition is closely related to the judicial definition declared in the case of *STB LTD. V. CONTRACT RESOURCES (NIG.) LTD*²⁹. per Olagunju, JCA; ‘*garnishee*’ as:

‘...a garnishee is a third party who is indebted to the judgment debtor or having custody of his money and who at the instance of the judgment creditor is being called upon to pay the judgment debt from his indebtedness to the judgment debtor or from the creditor of the judgment debtor in his account with the third party.

4. Position of the Police Authority on Garnishee Orders

The position of the Nigeria Police Force Authority on Garnishee order granted by the court is carried in a circular **No. CB:1351/A/DEPT/FHQ/ABJ/VOL.T/109 dated 9th December, 2008**, to the effect that, the officer(s) upon whose negligent conduct the order is grated is/are to be personally responsible as in line with the provisions of **Section 341** of the Police Regulations,³⁰

²⁴ Civil Procedure Rules 25 (1) of 1998.

²⁵ SCPA, S.84

²⁶ (2019) 10 NWLR (Pt. 1679) 75,

²⁷ OSBORN’S Concise Law Dictionary, Ninth Edition, P. 191.

²⁸ Ibid.

²⁹ (2001) 6 NWLR (Pt. 708) p. 115 at p. 123.

³⁰ Cap 359, LFN, 1990.

where it provides that: ***In the individual exercise of his power as a police officer, every police officer shall be personally liable for any misuse of his powers, or for any act done in excess of his authority.***

The above position of the Police Force has been reechoed and affirmed by the court in the case of ***AGBAKOBIA VS SSS***³¹ where it was held that:

May be I should also add that the Public Officer of a law enforcement agency that allows himself to be used by any member of the public, to commit illegality that results in damages and liability to the Agency or government, should be made to pay such costs or damages, personally, either in part or in whole, if this can serve to warn such officer to act within the rules and scope of his office. The Police in particular, should consider this, to stem the tide of unlawful arrests and detentions, which have resulted in huge financial losses to the Force and the Nation.

5. Conclusion

In order to avoid unnecessary enforcement proceedings against the Force, the management team of the Nigeria Police Force should as a matter of public and institutional interest appoint and emplace a law officer at each formation, such as, the Divisional Police Office, the State Criminal Investigation Department, Zonal Criminal Investigation Department and Force Headquarters Criminal Investigation Department whose primary responsibility is to evaluate, peruse and offer advice on the status of various complaint/petition letters file by the petitioners with a view to avoiding and entertaining civil related matters. This would not only avoid unnecessary litigation against the Force but would enhance the protection of the innocent citizen's rights from unnecessary infraction; promote public confidence in the Force towards professionalism in line with the global best practices; reduces unnecessary waste of energy and resources of the few law officers in the force; reduces unnecessary work load on the side of the court; and setting the standards operation within the statutory duties of the force as encapsulated in various statutory provisions.

Accordingly, by emplacing such law officers to peruse and advise the management on such related matters base on merit, some unnecessary misrepresentation of facts to attract police attention would be to some extent avoided thereby exonerating police investigating officers and the management from unnecessary liability, while the legal advice provided based on the facts of the allegation file by the petitioners would serve as a cover to the force against the petitioner(s) at the event of any potential enforcement proceedings. Lastly, members of the Force should always conduct and discharge their duties professionally and always advance their judgment based on sound principles of the law.

³¹ (1994) 6 NWLR (Pt.351) 475