

SUMMARY JUDGMENT PROCEDURE AND LIQUIDATED MONEY DEMAND: APPRAISING THE RECOVERY OF DEBT IN THE LAW COURT

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ABSTRACT

Almost all companies have a credit arrangement with a financial institution, particularly a bank. Others typically utilize long-term loans to pay capital expenditures, while some companies periodically use short-term loans to finance transitory working capital needs. All credit requests are required to undergo a thorough evaluation of the borrower's capacity to pay back the debt when it is due. The issues faced by the banking industry in debt recovery were also reviewed, along with the laws and procedures for debt recovery in Nigeria. This paper demonstrates, among other things, that adjudication delays are one of the biggest barriers to an efficient debt recovery process in Nigeria. The primary goal of this paper is to advocate that the summary judgment procedure in each state of Nigeria be revisited.

Keywords: Summary judgment procedure, Liquidated money demand, Garnishee proceedings, Undefended list procedure, Nigeria.

1. INTRODUCTION

As the term suggests, summary judgment refers to a decision made without a full trial. In some jurisdictions, it is known as the Summary Judgment Procedure, whereas in others, it is known as the Undefended List Procedure. Summary judgment and undefended list procedure were

brought into the legal system to shorten time and procedure in circumstances where it is obvious that a full trial will result in injustice.ⁱ

The purpose of this procedure is to avoid the need for laborious evidence hearings in cases that are straightforward and unambiguous, such as bank debt or other financial institution cases, where the defendant has no viable defence to summary judgment. While the specifics of this procedure may vary from state to state, the core components do not. A summary judgment is a ruling that is made in favour of the claimant or plaintiff without having to go through a full trial, which includes the taking of testimony and written arguments from the defence. The writ of summons, the statement of claim, and all the affidavit-based evidence, together with any pertinent exhibits and, in some occasions, the statement of defence, which are affixed thereto, serve as the basis for the decision. There may not be any pleadings in some cases, simply an affidavit from the claimant and a counter affidavit from the defendant, who also annexes his documents and sets forth a clear defence to the action (if any).ⁱⁱ In a case involving a summary judgment, the claimant must file an application for summary judgment and all of his original court records. If the defendant believes that he has a strong defence to the lawsuit, he must file it within the prescribed period of time specified in the rules, along with a counter-affidavit with a written address in response to the claimant's motion for summary judgment.

In *Odume v. Nnachi*,ⁱⁱⁱ the factors, for determining a liquidated sum was set out by the court. On the day of the hearing, the court shall permit the parties to present their arguments before making a determination regarding whether or not the defendant has established a triable issue. If the court determines that the defendant's claimed defence is a sham, it will proceed to grant the claimant's request for judgment. The matter will be moved to the general cause list and scheduled for trial or hearing if, on the other hand, the court is persuaded that the defendant's defence is a serious one.

When a claimant thinks that there is no defence to his claim, he must file the statement of claim, the list of documents to be used, the witness depositions, and an application for summary judgment, which must be accompanied by an affidavit outlining the reasons for the claimant's belief and a written brief in support of the application.^{iv}

In accordance with Rule "1" of this Order, a claimant must provide the Registrar with as many copies of all processes and papers as there are defendants.^v All processes and papers mentioned

in Rule "1" of this order must be served according to the procedures outlined in Order 7.^{vi} In the event that a party intending to defend the lawsuit has been served with the processes and documents referred to in Rule '1' of this order, he must file the following items by the deadline for defence: (a) his statement of defence; (b) witness depositions; (c) exhibits to be used in his defence; and (d) a counter affidavit and written brief in response to the application for summary judgment.^{vii}

The defendant also provides the court with the entirety of the defence by performing the aforementioned. Thus, the court is well-positioned to ascertain whether the defendant's claim has any credible defence(s). In an ideal world, it should be rather simple to discern whether a man owes his bank money or not, and no amount of legalese should be able to obscure facts that are readily ascertainable. As a result, the judge should be able to tell whether a defence to the action has been made after reviewing the affidavit and documents.^{viii}

If the defendant believes he has a solid defence and deserves to be given the opportunity to refute the accusations, the court could grant him leave to defend. If the judge determines that the defendant has no reasonable defence, the judge may then grant judgment in favour of the claimant. Judges may enter judgment for the portions of the claim for which there is no defence and grant leave to defend the other portions when they find that a defendant has a strong defence to some components of the claim but not to others.^{ix}

Here, it is anticipated that the judge will be able to determine whether or not the matter merits an oral trial at this point. At this point, if the judge determines that there is no need for a trial, he or she enters a final judgment against the defendant. The only exception to this rule is when summary judgment is rendered as a result of the defendant's neglect to take specific actions, in which case the summary judgment also functions as a default judgment. This judgment can only be reversed on appeal and not through an application to the same court as in default judgments.

The judge may grant one defendant the chance to dispute the claim when there are numerous defendants and when it appears to the judge that the former has a good defence and should be given this opportunity while the latter does not. In this case, the judge will enter judgment against the latter.^x

2. DISPUTE ON CERTAIN ELEMENT OF THE PROCEDURE OF OBTAINING SUMMARY JUDGMENT

In various cases and over time, disagreements have emerged concerning certain aspects of the process for getting summary judgment.

2.1 What type of defence will subsist to grant the defendant leave to defend?

The court's guidelines do not specify what constitutes a "good defence" to an action, allowing the defendant to raise such defence in court. As a result, the court has been given the responsibility of interpreting the phrase. The court will carefully review each document submitted by the defendant in determining if they have raised a potential strong defence. This includes the statement of defence, the witnesses' statements made under oath, the counter-affidavit, and the materials attached. The first prerequisite is that the defendant's defence must refute the claimant's evidence. The court's reasoning in this case is clear: the defendant must submit a defence that counters the claimant's evidence and directly challenges the claimant's facts; clever word play or persuasive lobbying alone will not be sufficient. When a bank debt is involved, the defendant must make it plain if they are owed money by the bank or not, and more crucially, why they are not. It is reasonable to anticipate that the court will enter summary judgment if the defence does not support the claimant's case and does not include evidence casting doubt on the validity of the allegations in the statement of claim.^{xi} The supreme Court did emphasise this point in *Nishizawa v. Jethwani*^{xii} as per Obaseki, J.S.C. held as follows;

It seems to me that the learned judge, Bada J., was not aware of these relevant facts that were included in the documents that were presented together with the affidavit; otherwise, he would have declared the statement of defence to be a sham and found no grounds for granting leave.

What exactly does a liquidated money demand mean?
Does a lawsuit filed in a summary judgment court have to be for a liquidated sum?

It is true that the argument that the money sought in a summary judgment action must be certain, liquidated, or easily ascertainable^{xiii}.

2.2 Should quick dispensation of justice triumph over the defendants right to fair hearing?

Normally, judgment is reached after a case is resolved on its merits. Choosing cases based on their merits implies that the court considered the arguments made by both sides before making a decision. The preponderance of the evidence determines whether a civil case is won or lost, and once the court issues a decision, it becomes *functus officio*, meaning that it has exhausted its ability to consider any issue or claim pertaining to that action, and as a result, its jurisdiction over that action has permanently ended. A superior court is the lone venue for appeal. In the adversarial Nigerian judicial system, parties must persuasively argue their positions in order to persuade the court to rule in their favour. The adversarial system is further emphasized by Nigeria's supreme law, which includes a clause that guarantees a fair trial in tandem with section 36 of CFRN 1999 as amended.. A superior court will reverse a judgment that was obtained in violation of this principle because it cannot stand the test of time. Therefore, it is important to consider if the summary judgment's justification violates the CFRN 1999's norm of a fair hearing.^{xiv}

It is believed that even though the court won't hold a full trial, it will examine the case's merits at the preliminary stage, when the defendant must persuade the court through his affidavit as to why he should be permitted to defend the suit. A defendant who has failed to make wise use of this opportunity cannot be heard to complain because equity rewards the watchful rather than the passive. It is not sufficient to simply state something; the statement must be supported by solid proof.

The quickest way to handle matters involving liquidated money demand that are not contested is through summary judgment and undefended list procedure. It expedites trials and doesn't in any way interfere with a defendant's right to an Attorney. Instead, it encourages the defendant to present a strong argument to the judge so that the court's limited time will not be wasted

hearing his defence. Even if a matter qualifies for a procedure, it is irrelevant if the claimant doesn't request it. Unsought claims cannot be granted by the court.

3. THE UNDEFENDED LIST PROCEDURE

Through the implementation of the new High Court Civil Procedure Rule throughout the State, it appears that the undefended list procedure is being phased out gradually. For instance, Lagos State preserved Order 11 which contained the summary judgment procedure but deleted the undefended list method that was found in Order 60 of the 2004 Civil Procedure Rules. There are many similarities between the undefended list procedure and the summary judgment procedure, particularly in terms of the goals and objectives of the two processes. However, it must be stressed that there are differences between the summary judgment procedure as it is described in the current Order 13 of the Lagos High Court Civil Procedure Rules, 2019, and the undefended list procedure, which is still in use in some states in Nigeria.^{xv}

The plaintiff must first file an *ex parte* application to place the writ on the undefended list, which is the primary distinction between the undefended list and an application for summary judgment under Order 13. The judge will then be consulted to decide if the matter qualifies for undefended list suit listing. If the judge rejects the request, the matter is moved right away to the general cause list where it will wait its turn with other cases and continue in accordance with the usual procedure. The writ and affidavit are served on the defendants, if the matter is added to the undefended list. The defendant now has the responsibility of persuading the court by his notice of intention to defend and affidavit that he has a defence to the lawsuit on the merits or, at the very least, that he has presented a triable issue. At this point, the process is identical to the summary judgment method described in Order 13 and the judge may issue the same rulings.^{xvi}

The courts are required to take a fairly liberal stance in favour of the defendant when determining whether he has brought triable issues under the undefended list method in order to ensure that he receives fair hearing. Any doubt that has been cast upon the claimant's case must be settled in court. The Court of Appeal's reasoning in the case of *Sada v. Access Bank* was based on this.^{xvii}

4. GARNISHEE PROCEEDINGS

The Sheriffs and Civil Process Act (SCPA) in Nigeria specifies the process for executing a judgment (money judgment) through garnishee procedures.^{xviii} According to section 83 of the SCPA, garnishee proceedings start when a judgment creditor submits an *ex parte* application to the court requesting an order *nisi* requiring any other person who owes money to the judgment debtor (referred to as the garnishee) to appear in court and provide justification as to why he should not be required to reimburse the judgment creditor the money owed by him (the garnishee) to the judgment debtor in fulfillment of the judgment sum.

Garnishee actions are one of many options for enforcing judgements, and more especially monetary judgments. There are various ways of enforcement of judgment as provided by the Sheriffs and Civil Process Act, which include: writ of *feri facias* (“writ of *fifa*”),^{xix} writ of possession,^{xx} writ of sequestration,^{xxi} writ of delivery,^{xxii} judgment debtor summons,^{xxiii} and garnishee proceedings.^{xxiv} The Sheriffs and Civil Process Act does not explicitly mention winding-up or bankruptcy processes as additional methods of enforcing judgments. Garnishee actions are only used to carry out monetary judgment enforcement. In the case of *Balogun v. Wema Assets Mgt Ltd. & Ors*^{xxv} the court held that a monetary judgment against a defendant can be collected using a process known as a garnishee, which entails ordering a third party (the garnishee) to pay the plaintiff directly any money that would otherwise be owed to the defendant. It is the procedure of executing a monetary judgment through the seizure or attachment of the judgment debtor's obligations that are owed to him or are accruing to him and are part of his executable property. Generally speaking, a court will order a third party in possession of the judgment debtor's money to pay that money to the judgment creditor to the extent of the judgment debt or all of the money if the money isn't enough to pay off the debt. As a result, the court orders the third party to pay the judgment creditor any debt it had previously owed to the judgment debtor or any funds it has in its possession that belong to the judgment debtor upon the application of the judgment creditor.^{xxvi}

The affidavit submitted in support of the *ex-parte* application must include the following information: that judgment has been obtained; that the judgment sum is still unsatisfied; a description of the amount that is still owed; and that the judgment debtor is indebted to someone else who is subject to the court's jurisdiction. The SCPA's definition of a garnishee as a creditor

of the judgment debtor in section 83 is unambiguous^{xxvii}. The section outlines the information that must be included in an order nisi application.

5. PARTIES TO GARNISHEE PROCEEDINGS

In a garnishee proceeding, there are essentially 3 (three) parties: the judgment debtor, who is also known as the garnishor, the judgment creditor who is in possession of the judgment debtor's money, and the third party. These persons involved in garnishee proceedings will be discussed below.

5.1 The Judgment Creditor

A party that has been given a monetary judgment in any legal procedure is known as a judgment creditor. Any judgment amount or debt belongs to it. When a court grants a party a judgment sum, that party is referred to as the judgment creditor, and when the judgment creditor asks the court to use garnishee procedures to enforce the stated judgment, he or she is known as a garnisher. So, in garnishee proceedings, a garnishor is a judgment creditor.

It is pertinent to state that a judgment debt is described as “;;; a monetary award made by a court of competent authority in the form of a debt, damage award, or other financial judgment. It starts once the plaintiff has won a favourable judgment from the court.”^{xxviii}

5.2 The Judgment Debtor

On the other side, the party against whom the monetary award was issued is known as the judgment debtor. A judgment debtor is, to put it simply, a party who has been ordered by a court to pay a judgment debt to a judgment creditor but has not yet complied with the aforementioned order.

5.3 The Third Party

The third party (garnishee) is the person in charge of the judgment debtor's funds (bank, employer, etc). The court order (garnishee order) requires the garnishee to seize, in part or in

full, the money (account balance, payment, wages) belonging to the debtor or defendant and transfer it to the creditor or plaintiff until a debt or claim is satisfied, even though the garnishee is not a party to the court case between a debtor and creditor or a defendant and a plaintiff (the garnisher).^{xxix}

6. Who are Necessary Parties to Garnishee Proceeding

The answer to the question of who must be involved in garnishee proceedings primarily depends on where the case is in the proceedings. In terms of stages, garnishee proceedings are divided into 2 (two). An *ex-parte* application for an Order *nisi* directing the garnishee to appear and give justification for his refusal to pay the judgment debtor the sum in his possession is filed as the first step in the legal process. The judgment creditor (garnishor) and the third party are the only two parties involved in the case at this point in the proceedings (garnishee).^{xxx} This has been given judicial backing by the supreme Court in the *Gwede v. Delta State House of Assembly & Anor*^{xxxi}.

However, in the second garnishee procedure, there are typically 3 (three) parties involved: the judgment debtor, the judgment garnishor, and a third party (garnishee),^{xxxii} According to the Court of Appeal, "serving the order *nisi* and all supporting proceedings on the judgment debtor is not a matter justifying righteousness" but rather a legal necessity that gives the judgment debtor the right to be heard^{xxxiii}.

Consequently, going by the provision of section 83 at the Sheriffs and Civil Process Act and the Supreme Court decision in *Gwede v. Delta State House of Assembly & Anor*,^{xxxiv} it is abundantly clear that the judgment debtor is a party and is entitled to be heard at the making of the order *nisi* before the making of the order absolute.

7. PROCEDURE FOR GARNISHEE

The procedure for garnishee is provided for in section 83 – 92 of Sheriff and Civil Process Act. Section 83 (1) provides^{xxxv} for the commencement of garnishee proceedings. According to the provisions, there are two steps to the garnishee proceedings: the *ex-parte* application stage, during which an order *nisi* is obtained, and the order absolute stage, during which parties are

heard. It should be mentioned that it is required by section 83(2) of the Sheriffs and Civil Process Act. As a result, the garnishee and judgment debtor must be served with *nisi* at least 14 (fourteen) days before to the hearing date.

7.1 Order Nisi

The legislation stipulates that the order *nisi* must be delivered on the garnishee and the judgment debtor at least 14 days before the subsequent hearing after it has been granted. As a result, from the date of service of the order *nisi* until the day of the hearing, the garnishee must have at least 14 days to provide justification. The order *nisi* is typically a court order with conditions that directs the debt from the judgment to be paid. The garnishee must be unable to provide justification for why it should not be required to pay the judgment amount before the actual payment can be made. The Supreme Court in *Amobi v. Nzegwu & Ors*^{xxxvi} defines the word *nisi* as “an elliptical expression affixed to the decree and denotes that the decree so granted is conditional upon another order making it absolute.”^{xxxvii}

The hearing to show cause serves the objective of giving the garnishee the chance to provide any arguments for why the garnishee order *nisi* should not be made absolute, or why the garnishee should not be required to pay the judgment debt to the judgment creditor. The order *nisi* is more of a request for the garnishee to provide justification, failing which he will be required to pay the judgment debt to the judgment creditor, as is evident from the foregoing. In accordance with Section 83(1) of the Sheriff and Civil Process Act, a request for an order *nisi* must be made *ex parte* and be accompanied by an affidavit in which the petitioner must demonstrate the items listed^{xxxviii}.

However, until the court issues further instructions, the debt is immediately bound in the garnishee's hands after the order is served. Any alienation of the debt following attachment without the court's permission is regarded as a breach of the order *nisi* and, in most cases, results in judicial sanctions as held in the case of *FBN v. Jacob Agidi (Nig.) Ltd.*^{xxxix}

It is important to note that the SCPA does not specify the precise format or procedure by which the garnishee must provide justification. But since records serve as the courts' guide, filing an affidavit typically accomplishes this, and over time, the courts have endorsed this approach.^{xl}

The garnishee may contest its debt to the judgment debtor when providing justification for why it shouldn't be required to pay the judgment creditor, in which case the court may order that the matter be tried or decided. Additionally, the party seeking to attach the debt may demonstrate that it is someone else's property or that another party has a lien or charge against it.^{xli}

Another crucial distinction is that, contrary to section 83(2) of the Sheriffs and Civil Process Act, which mandates that the garnishee and judgment debtor receive notice of the order *nisi* at least 14 days prior to the hearing date, Order 37 Rule 3(1)(a) of the Federal High Court (Civil Procedure) Rules, 2019 mandates that the garnishee receive notice at least 15 days prior to the day set aside for further consideration.^{xlii} However, Order 37 Rule 3(1)(b) of the Federal High Court (Civil Procedure) Rules, 2019 specifies that the judgment debtor must be served with the order at least 7 days after the garnishee and at least 7 days before the day set aside for further consideration of the matter. Regarding how long the garnishee and judgment debtor must be served with the order *nisi* prior to the hearing, there appears to be some confusion. In our opinion, this conflict should always be decided in favour of section 83(2) of the Sheriffs and Civil Process Act, which is the more important law and takes precedence over the Rules of Court.^{xliii} This position is further supported by the Court of Appeal's ruling in *APC v. Zenith Bank & Ors*^{xliv} which held regarding the significance of serving the judgment debtor at least 14 days before to hearing thus: “Therefore, in my humble opinion, the trial court's jurisdiction was stripped because the garnishee order nisi was not served on the appellant at least fourteen days before it was made absolute.”

7.2. Order Absolute

If the appellant was not served with the garnishee order *nisi* at least fourteen days before it became absolute, in our opinion, the trial court's jurisdiction is removed.^{xlv} On the return date specified as the first step of granting the order *nisi*, this order is made at the second stage. According to the Sheriffs and Civil Process Act and subject to the fulfillment of specific requirements, this order is granted on the hearing day following the service of the order *nisi* on the garnishee and judgment debtor. Section 86 of the Sheriffs and Civil Process Act outlines the requirements for granting an order absolute^{xlvi}.

The order *nisi* against the garnishee may become absolute if no affidavit to show cause is submitted by the return date for hearing. The court may also issue an order absolute against the garnishee to the extent of the judgment debt or any portion thereof that may be sufficient to satisfy the judgment or order, as well as the costs of the garnishee proceedings, if the garnishee does not appear on the day of hearing and the court is satisfied that the garnishee was served with the order *nisi* and that there is proof of service of the hearing date.^{xlvi} This is the position of the court in *Skye Bank Plc v. David & Ors.*^{xlvi}

An absolute ruling has the effect of concluding the garnishee proceedings completely and definitively. The court also assumes the status of *functus officio*, meaning that any additional arguments based on the proceeding must be addressed on appeal at this point.^{xlix} Instances when a lien is placed on a debt, a third party is charged with it, or the debt is owned by a third party are covered by section 88 of the Sheriffs and Civil Process Act. In such cases, the court may issue an order requiring the third party to attend and declare the specifics of his claim over the indebtedness. Section 89 of the Sheriffs and Civil Process Act allows the court the authority to proceed with making an order as if the third party had appeared in the proceedings and there is proof of delivery of the court order.

The release of the garnishee is made possible under section 91 of the Sheriffs and Civil Process Act. The section is as follows:

Even if the procedures are thrown out or the judgment or order is overturned, any payment made by or execution imposed upon a garnishee pursuant to any such proceedings must be a legal discharge to him against the debtor liability under a judgment or order, to the amount paid or imposed.

This suggests that after a garnishee pays for a garnishee order or execution imposed upon the garnishee, the garnishee is released from its obligation to the judgment debtor to the extent of the payment made or execution imposed. In addition, if a garnishee can demonstrate any of the following, the court may absolve him of the judgment debtor's obligation:

- i. It does not have any of the judgment debtor's money in its possession.

- ii. that the judgment debtor's debt or account mentioned in the order *nisi* doesn't exist.
- iii. that a current court order already applies to any funds or debt held in its custody that belong to the judgment debtor.

Overall, a garnishee will be released from the garnishee proceedings if he does not contest the debt, in which case the order *nisi* becomes final and the garnishee pays the judgment creditor, or if it successfully demonstrates a reason why it should not be required to pay the judgment creditor any money.

8. CONCLUSION

This paper has looked at the definition and application of the liquidated money demand and summary judgment procedures in Nigerian courts. This was accomplished by first bringing up the matter of debt collection in court, as there had been disagreements in the past regarding certain aspects of the legal system's process for obtaining summary judgment.. It is found that only situations where the defendant is unable to establish triable issues give rise to the summary judgment procedure. The paper suggests that parties should be given fair hearing so that they can trust the court in situations involving debt recovery.

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ENDNOTES

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- i Obi, O Liquidated Money Demand and the Summary Judgment Procedure: Critical Examination of the Decision in *Nigerian Port Authority v. Aminu Ibrahim & Co.* <<https://www.mondaq.com/nigeria/trials-appeals-compensation/757312/liquidated-money-demand-and-the-summary-judgment-procedure-critical-examination-of-the-decision-in-nigeria-port-authority-v-aminu-ibrahim-co>> accessed 1 May, 2022
- ii Odikpo, E. Practice and Law of Debt Recovery in Nigeria (2nd ed.) Princeton and Associates Publishing Co. Ltd. 2021 at 130.
- iii [1964] 1 All NLR 329. 1. The total must be calculably determined without more inquiry. 2.The parties to the contract must have mutually and unambiguously agreed on a definite sum that will be due in the event of a violation. 3.Prior to the breach, the agreed-upon fixed sum must be known.
- iv Order 13 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 2019; Order 11 Rule 1 of the High Court of Delta State (Civil Procedure) Rules 2009 and Order 11 Rule 1 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.
- v Order 13 Rule 2 of the High Court of Lagos State (Civil Procedure) Rules 2019; Order 11 Rule 2 of the High Court of Delta State (Civil Procedure) Rules 2009 and Order 11 Rule 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.
- vi Order 13 Rule 3 of the High Court of Lagos State (Civil Procedure) Rules 2019; Order 11 Rule 3 of the High Court of Delta State (Civil Procedure) Rules 2009 and Order 11 Rule 3 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.
- vii Order 13 Rule 4 of the High Court of Lagos State (Civil Procedure) Rules 2019; Order 11 Rule 4 of the High Court of Delta State (Civil Procedure) Rules 2009 and Order 11 Rule 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.
- viii Odikpo note 3 above 130.
- ix Order 13 Rule 5(1)(2)(3) of the High Court of Lagos State (Civil Procedure) Rules 2019; Order 11 Rule 5 of the High Court of Delta State (Civil Procedure) Rules 2009 and Order 11 Rule 5 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.
- x Order 13 Rule 6 of the High Court of Lagos State (Civil Procedure) Rules 2019; Order 11 Rule 6 of the High Court of Delta State (Civil Procedure) Rules 2009 and Order 11 Rule 6 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.
- xi Odikpo note 3 above 130
- xii (2001) 8 WRN, 153
- xiii *Libra Import (Nig) Ltd. v. Access Bank* (2018) LPELR-46795(CA) as per Tukur, J.C.A; The court gave an wholesome analysis of what constitutes a liquidated money demand in the case of *Digital Security Technology Ltd & Anor v. Andī*^{xiii} There is no denying that a number of Supreme Court precedents have ruled that liquidated money claims are under the scope of the summary judgment process. If the action is based on a breach of contract, the term "liquidated money demand" has been held to refer to a sum of money that the parties to the contract previously agreed upon. ^{xiii} It has also been described as a specific, agreed-upon sum that the defendant cannot dispute. In *Maja v. Samouris*^{xiii} the Supreme Court viewed a liquidated money demand as an established claim or definite dollar figure, which means no further steps are required to assess the degree of the defendant's culpability. It is claimed that a claim has not been liquidated when the amount to be recovered is not predetermined but rather depends on the specifics and is determined by opinion or estimate. To put it simply, the sum claimed must be determinable and, if based on a contract, it must have been agreed upon by the parties.
- xiv Obi,O note 2 above.
- xv Order 22 of the Katsina State Civil Procedure Rules 1991.
- xvi Odikpo at 148-149.
- xvii (2017) Judy Electronic Law Report 37554 (CA) Where the Court of Appeal held, "A defendant's affidavit in support of Notice of Intention to defend a suit on the Undefended List raises a tangible issue when the affidavit is such that the plaintiff will be required to explain certain matters with regards to his claim or where the affidavit throws a doubt on the plaintiff's claim.
- xviii Cap 56, Laws of the Federation of Nigeria, 2004.
- xix Section 20 of the Sheriffs and Civil Process Act.
- xx *Ibid.* Section 24.
- xxi *Ibid.* Section 82.
- xxii *Ibid.* Section 51.
- xxiii *Ibid.* Section 55.

- xxiv Section 83 of the Sheriffs and Civil Process Act; Note that this is the main statutory provision for garnishee proceedings.
- xxv (2015) LPELR-25573 (CA).
- xxvi Nyako, AB Garnishee Proceedings and the effective realization of judgment debts, A paper presented at the NBA-ICLE Training hosted by Legal academy on March 28th & 29th, 2022.
- xxvii The section outlines the information that must be included in an order nisi application. ... and upon affidavit by the applicant or his Legal Practitioner that ... If the debtor owes money to any other person who is located in the State, the court may order that the debtor's obligations to the third party, known as the garnishee, be attached in order to satisfy the judgment or order and the associated costs. Additionally, by the same or any subsequent order, the garnishee may be required to appear in court to explain why he is refusing to pay the party who obtained the judgment or order.
- xxviii *G.K.F. Investment (Nig) Ltd. v. Nitel Plc* (2009) LPELR-1294 (SC).
- xxix Ihedoro, F Understanding Garnishee Proceedings in Nigeria <<https://oal.law/understanding-garnishee-proceedings-in-nigeria>> accessed on 1 April, 2022.
- xxx Nyako note 27 above.
- xxxi (2019) LPELR-47441 (SC)
- xxxii This position is based on the provision of *Section 83(1) of the Sheriffs and Civil Process Act*, which requires the oral examination of the debtor before and after making of the order Nisi upon the application of the judgment creditor. The two stages of garnishee proceedings has created a degree of uncertainty as to whether the debtor is entitled to be heard in the proceedings. *Section 83(2) of the Sheriffs and Civil Process Act* requires the mandatory service of the order Nisi on the judgment debtor. The Section reads thus: "*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.*"
- xxxiii *Gwede* note 32 above.
- xxxiv *Ibid.*
- xxxv The court may order that debts owing be paid upon the ex-parte petition of any person who has rights to the benefit of a judgment for the recovery or payment of money, either before or after any oral examination of the debtor responsible under such judgment, and upon affidavit by the applicant or his legal counsel that the judgment has been recovered and that it is still unsatisfied, as well as the amount and that any other person is indebted to the debtor and is located within the State, 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 garnishees 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 are order together with costs aforesaid.
- xxxvi (2013) LPELR-21863 (SC).
- xxxvii Advanced Law Lexicon Book 3 at 3199.
- xxxviii 1. It is an active monetary judgment in favour of the judgment creditor against the judgment debtor, 2. The judgment total (the precise unliquidated amount) has not yet been liquidated by the judgment debtor within the timeframe stipulated in the judgment or as directed by the court. However, if there is no such time limit indicated, then 3 (three) days following the verdict, unless the court grants an extension (Order 4 Rule 1(2) of the Judgment (Enforcement) Rules of court) and the court has the authority to determine whether a third party (the garnishee) is in possession of money owed to the judgment creditor. It is important to note that once the garnishee receives the order nisi, he takes custody of the money on behalf of the judgment creditor and is obligated to keep it from going to the judgment debtor (Section 85 of the sheriffs and Civil Process Act).
- xxxix (2018) LPELR044997 (CA).
- xl *Nigerian Agip Oil Company Ltd. v. Peter Ogini & Ors* (2010) 2 NWLR (pt. 1230) 131; see also *Nigerian Breweries Plc v. Dumuje* (2016) 8 NLWR (pt. 1515) 536.
- xli Section 87 and 88, Sheriffs and Civil Process Act.
- xliv There is a similar provision under order 46 Rule 3(a) of the High Court of the Federal Capital Territory, Abuja Civil Procedure Rules, 2018
- xlvi Nyako note 27 above.
- xlvii (2021) LPELR-53074 (CA)
- xlv Ihedoro note 30 above.
- xlvi The court may order execution to issue and it may issue accordingly without any prior writ or process, to levy the amount, upon proof of service, if the garnishee fails to pay into court the amount due from him to the judgment debtor, or an amount equal to the judgment debt, as well as the cost of the garnishee proceedings and does not dispute the debt due or claimed to be due from him to such debtor.

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- ^{xlvii} Aluko & Oyebode, Garnishee Procedures in Nigeria: The need for Reform (Jun 2021) <<https://www.aluko-oyebode.com/wp-content/uploads/2021/06/GARNISHEE-PROCEEDINGS-IN-NIGERIA-THE-NEED-FOR-REFORM-fl.pdf>> accessed 15 April, 2022.
- ^{xlviii} (2016) LPELR-41548 (CA).
- ^{xlix} Aniekpeno, E An Overview of Garnishee Proceedings in Nigeria <<https://www.manifieldsolicitors.com/wp-content/uploads/2019/garnishee-article-2.0.pdf>> accessed 7 April, 2022.

