

ENFORCEMENT OF JUDGMENTS AND ORDERS

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1. INTRODUCTION

Execution is a process for enforcing judgments and orders of courts. The various methods of executions were discussed yesterday and need not be repeated. Today's discussions are to consider the extent that contempt of court and prerogative writs may be employed to aid execution.

2. BASIC RULE IN EXECUTIONS

The basic rule to be borne in mind is that where there is in place specific rule for implementing a remedy, that rule must be utilized before other rules can be considered.

This is explicit from CI 47, Order 43, r 1 which states in no uncertain terms that:

“(1) Subject to these rules, a judgment or order for the payment of money, not being a judgment or order for the payment of money into court, may be enforced by one or more of the following means:

- (a) writ of fieri facias;***
- (b) garnishee proceedings;***
- (c) a charging order;***
- (d) the appointment of a receiver;***
- (e) in a case in which rule 5 applies, an order of committal or a writ of sequestration.”***

It is obvious from Rule 1 that the methods to be used for the enforcement of judgments or orders as enjoined by CI 47 do not include a writ of imprisonment, summons to show cause, an order of mandamus or an order for contempt of court based on refusal to obey a court order to pay money.

An applicant who applies to use any method beside any of the five above knows clearly that the application is not authorized by statute. He must first justify why he cannot use any of the express methods in Rule 1 to enforce that judgment.

There are rules on executions. Those rules are made to enforce judgments and orders of courts. It is those rules which must be invoked first and foremost and utilized. There is no justification in looking outside those rules unless

- a. there are no rules for enforcing a particular judgment or order and
- b. the execution rules in place are not adequate to enforce a particular judgment or order.

If these two conditions are not fulfilled, an application for the enforcement of a judgment or order by a method outside these five rules should not be entertained. The established principle of law is that where statute prescribes rules and procedure to be applied in any given situation, those rules and procedure should first be exhausted before any rule outside the prescribed ones may be considered.

These rules on executions as discussed in the first lecture are more than adequate for the enforcement of every court judgment or order.

3. IMPRISONMENT FOR NON PAYMENT OF JUDGMENT DEBT

In this country, the only circumstances under which a person can be lawfully imprisoned are as provided in the 1992 Constitution, art 14(1). The provisions are as follows:

“14. (1) Every person shall be entitled to his personal liberty and no person shall be deprived of his personal liberty except in the following cases and in accordance with procedure permitted by law –

- (a) in execution of a sentence or order of a court in respect of a criminal offence of which he has been convicted; or***
- (b) in execution of an order of a court punishing him for contempt of court; or***

- (c) *for the purpose of bringing him before a court in execution of an order of a court; or*
- (d) *in the case of a person suffering from an infectious or contagious disease, a person of unsound mind, a person addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community; or*
- (e) *for the purpose of the education or the welfare of a person who has not attained the age of eighteen years; or*
- (f) *for the purpose of preventing the unlawful entry of that person into Ghana, or of effecting the expulsion, extradition or other lawful removal of that person from Ghana or for the purpose of restricting that person while he is being lawfully conveyed through Ghana in the course of his extradition from one country to another; or*
- (g) *upon reasonable suspicion of his having committed or being about to commit a criminal offence under the laws of Ghana.”*

It will be observed that these provisions do not include imprisonment of a person for non payment of a debt. The exclusion of that condition can be interpreted only to mean that non payment of a debt is not one of the constitutional grounds for imprisoning any person in this country.

Therefore, using non payment of judgment debt as ground for imprisonment is literally unconstitutional.

Rules on civil imprisonment in the High Court and Circuit Court and summons to show cause in the district court permit imprisonment of a judgment debtor who does not pay his debts. Those rules are inconsistent with article 14(1) of the 1992 Constitution. To the extent that they are inconsistent with the constitution, they should be considered as void: See article 1(2) of the Constitution. Simply stated, civil imprisonment and summons to show cause are revoked and inapplicable under any circumstance to enforce the payment of debt.

USE OF CONTEMPT PROCEEDINGS TO ENFORCE COURT ORDER TO PAY MONEY

The view used to be held that a person who disobeys a court order for payment of money should be punished for contempt of court. Article 14(1) (b) was cited as authority for this view.

Contempt may be civil or criminal. By definition, civil contempt is disobedience of a court order. An order for payment of money is an instance of a court order. Therefore, a person who disobeys that order could be considered as having breached a court order.

From this, it was contended that a person who breached an order of the court to pay money committed civil contempt for which he could be punished. One of the punishments for civil contempt is imprisonment. It was therefore argued that a person who disobeyed a court order to pay money could be imprisoned for contempt of court.

The logic of this argument can hardly be faulted. But it should not lead to the literal application of the rule that any disobedience of any court order should be punishable by contempt of court proceedings.

Whether the view was right or wrong, the Supreme Court has put the issue to rest by its decision in *Republic v High Court, Accra; Ex parte PPE Ltd*, SC, Civil Motion No. J5/12/2007, dated 21st November 2007, unreported. In that case, the court referred to Order 43, r 1(1)(e) which provides that one of the methods for enforcing an order of the court for the payment of money is

“An order of committal or writ of sequestration”

However, Order 43, r 12(1) also provides that

“Rule 1(1) of this Order with the omission of paragraph (e) and Orders 27, 44 to 47 and 49 shall apply to a judgment or order for the payment of money.”

The court interpreted these rules to mean that by the specific exclusion of paragraph (e), the general provisions on the use of committal proceedings to enforce court orders are not applicable to orders for the enforcement of civil debts or orders for the payment of money. In other words, disobedience of

an order to pay money cannot be sanctioned by committal or attachment for contempt of court.

This view of the Supreme Court seems to have been echoed earlier in *Republic v High Court, Accra; Ex parte Laryea Mensah* [1998-99] SCGLR 360 at page 368 where the court explained contempt of court as follows:

“By definition, a person commits contempt and may be committed to prison for willfully disobeying an order of court requiring him to do any act other than the payment of money or abstain from doing some act; and the order sought to be enforced should be unambiguous and must be clearly understood by the parties concerned.”

It is significant to note that almost ten years ago and long before CI 47 was promulgated, the Supreme Court by definition excluded the use of contempt of court in enforcing orders for the payment of money.

5. USING PREROGATIVE WRITS TO ENFORCE ORDERS FOR PAYMENT OF MONEY.

As you all no doubt aware, prerogative writs which are issued in the exercise of supervisory jurisdiction cover certiorari, prohibition, mandamus, quo warranto and habeas corpus as set out in article 161 of the 1992 Constitution. Of these orders, only mandamus is sometimes invoked for enforcing orders for the payment of moneys.

There are three principles to be considered in applying mandamus to enforce civil judgments or orders. The first is that where there are rules expressly provided for the enforcement of judicial relief, those rules should be used before considering other rules. What has to be considered is whether there are laid down rules for enforcement of the judgment. If there are, they should be applied before resorting to orders of mandamus. There are five rules provided in CI 47, Order 43, r 1 for enforcement of orders for payment of money as discussed above in (2)..

The second principle is that mandamus cannot be invoked where there is an equally effective common law remedy available. This principle is

particularly applicable to contractual obligations which can be settled by injunctions, declarations, damages and specific performance.

The third principle and one most germane to the use of mandamus in enforcing civil debts is that an order of mandamus is granted only where there is a public duty. The locus classicus on the definition of mandamus is *Republic v Chieftaincy Secretariat; Ex parte Adansi Traditional Council* [1968] GLR 736. That case set out the requirements for a valid mandamus as:

“...before a court would make such an order of mandamus the applicant must satisfy four main conditions, namely; (a) that there was a duty imposed by statute on which he relied, (b) that the duty was of a public nature, (c) that there was a right in the applicant to enforce the performance of the duty and (d) that there had been a demand and a refusal to perform that public duty enjoined by statute.”

Mandamus cannot be issued against the performance of a duty based on private contract of employment. When a private individual obtains a judgment against a another private individual, or even against a Government body, for the payment of money, a great deal of care has to be taken before using mandamus to enforce that judgment, especially if the judgment is based on a private contract of employment or debt privately incurred in private transactions between individuals. No public duty arises or exists in such transactions.

Of course, mandamus cannot be employed to enforce any duty based on discretion, morality or ethics.

CONCLUSION

This seminar has been organized with the view to assisting judges to make accurate orders on enforcement of judgments and court orders. When such applications on enforcement of court orders are made, they need to be carefully scrutinized in the light of what have been discussed above.