

THE ROLE AND FUNCTIONS OF A BAILIFF IN THE JUDICIAL PROCESS

INTRODUCTION

The work of a Bailiff is very important in the Administration of Justice in the Judicial Process. Service of Court process has for the past 100 years been affected by the Bailiffs or what is also known as Sheriff Officers. These officers are employees of Government. However, under Order 7 rule 1 of the High Court Civil Rules Cl 47, It states that '*a document which is required to be served*' on a person, shall be served by a Bailiff of the Court or Process Server.

In accordance with the provision of this order, the Lord Chief Justice has decided to introduce presently the **PROCESS SERVER** or the **PRIVATE BAILIFF** concept that has necessitated this Training Programme.

It is expected therefore, that at the end of this Training, you would have appreciated the challenges involved and acquire the basic experience and skills necessary in carrying out this job.

BACKGROUND:

Who is a Bailiff?

Under the British Legal System, as inherited by our Legal System, a Bailiff or Sheriff Officer was the King's Representative; A Law Officer attached to the Courts, who help the Sheriff in his Sherival duties. They also acted as police Officers, Warders, etc.

In our present Judicial Administration, the Sheriff is the Judicial Secretary, whose powers have been delegated to the Deputy Sheriff who is the Registrar of the Court. A Bailiff in the performance of his duties then becomes a Deputy Sheriff's Officer.

FUNCTIONS:

Basically the duties of a Bailiff are three fold;

- a. SERVE,

- b. DELIVER; and
- c. EXECUTE the Processes of the Court; serve Jury Summons and conduct Judicial Sales.

SERVICE - USUAL PROCESSES OF SERVICE:

- a. Writ of Summons
- b. Motions and Affidavits
- c. Hearing Notices
- d. Processes In Appeal Cases
- e. Jury Summons
- f. Garnishees

Service of these documents are made by handing over same to the Party (where the situation demands, it may be necessary to read the contents to the person)

Perhaps the most common ones are:

- 1. Writ of Summons;
- 2. Ordinary Writ of Summons – High/Circuit Courts;
- 3. General List – District Court – (Used in claims of Damages and Titles to Properties)
- 4. Specially Endorsed Writ – High/Circuit Court
- 5. Undefended List – District Court - (Recovery of Debt or Liquidated money)

PERSONAL SERVICE:

The Writ of Summons must be served on the Defendant personally; but where you appear to be obstructed or under any act of threat, you can leave or throw the document at him or her and it shall be deemed to be **'proper'** Service. It must be noted that this mode of service should be used specifically as the occasion demands.

Other Documents, which need personal service, include: -

- a. Notice of Appeal
- b. Entry of Judgment
- c. Process in Contempt Proceedings
- d. An injunction order

WHERE PERSONAL SERVICE IS NOT NECESSARY

Provisions have been made under the Rules in the case where personal service is not possible:

a. Company or Corporate Body

Service must be made on the Managing Director or any 'Responsible' officer of the said Company.

b. Armed Forces, etc

By a letter to the Commanding officer of the station or Unit. A returning letter to that effect from the commanding officer shall be a proof of some.

c. Civil Servant

Is made by sending a letter to the Head of Department

d. A Person on Board a Ship

Where the person to be served is working on a ship, service will be effected through the officer in charge of the Ship or Vessel

e. Lunatic, In Asylum or Prison

Any person of unsound mind shall be served on the person under whose care he or she is being kept. For those in a Public asylum, service shall be made on the Keeper or person in charge of that institution

f. Service on a Lawyer

Under the New Rules:(Order 7 r 12 (2) of C.I.47 2004, a lawyer can be served with a Writ ONLY when he makes undertaking in Writing.

g. Service Out of Jurisdiction

Order 8 Rule 1 (2) deals with service out of Jurisdiction. This is effected by an Ex-Parte application, supported by an Affidavit stating sufficiently the grounds upon which such application is made.

DAYS AND HOURS OF SERVICE

The Civil Procedure Rules stipulates the days on which service **cannot** be made. That is a SUNDAY, GOOD FRIDAY, CHRISTMAS DAY, A DAY before

Christmas (Christmas Eve) and a day after Christmas (Boxing day) and any other PUBLIC HOLIDAY.

There have been arguments as to execution of certain Documents on the days quoted above: ABSCONDING WARRANTS: W/ARREST, ETC.

TIME OF SERVICE:

Has also been affected by the same phenomenon; in that various attempts have been made by the Authorities to make the Rules flexible so as to serve documents on Litigants who take advantage of this condition to evade service within these hours.

Generally speaking, however the time allowed is 6.00 am to 6.00pm.

PROOF OF SERVICE:

'Proof of Service' or endorsement of service on a Document is very essential in the whole cycle of managing a case for trial.

Proof of service is usually made on the original documents on the Docket meant for Court, and as much as practicable should be made within a reasonable time after service of such document by the Bailiff or the serving officer. But for the purpose of this programme, all service has to be proofed by an affidavit sworn to by the process server.

OUT STATION

In the usual process serving, especially, by Court Bailiff in an out-station process, 'proof of service' is made by swearing to an Affidavit to that effect and sent to the original Court of issue of such document.

POSTING

"Proof of Service" in respect of "Posting of document" is only done by swearing to an affidavit; a copy of the Document so posted is then exhibited in the Affidavit as being the true copy, so posted by the Bailiff.

Example: 'This is the copy of the document marked as Exhibit 'A' referred to in the affidavit of DSK.

Sworn before me this day of 2005

.....
Commissioner for Oath

LIFE – SPAN:

If after the filing of a Writ of Summons and several attempts to effect service has failed and the Writ remains unserved for a Year, the Writ is supposed to have expired'.

The plaintiff can however apply to the Court to be renewed. The period allowed for renewal is another 12 months.

In the case of **Execution** its expiratory period is also 12 months and can also be renewed for 12 months by an order of the Court.

EXECUTION

Types and Mode of Execution

1. FI:FA
2. POSSESSION
3. WARRANT OF ARREST
4. GARNISHEE, etc
5. SEQUESTRATION

Unlike the General Processes which are served on the person by handing over the documents to him, Execution is by physically removing the items or properties or by attaching them for subsequent sale to satisfy the judgment debt and costs. After you have explained the purpose of the document being executed, which also serves as your authority.

An example is Writ of FI: FA after the necessary forms (below) had been completed is:

- i. Notice;
- ii. Attachment of Moveable and Immoveable properties;
- iii. Condition of Sale;

The Process Server must satisfy himself of the following:

1.
 - a) Whether Judgment had been given at all, and
 - b) Whether entry of Judgment has been served on the Judgment Debtor and endorsed with proof of service
 - c) Whether the 7 days allowed for filing of appeal has elapsed and no appeal filed.

2. You then proceed to the person or place of the Judgment Debtor.

The items involved or mentioned on the Particulars of Attachment are removed, that is, personal effects, vehicles, etc. Where immoveables eg. Building, farmland or machinery: A copy of the Notice is posted on them. Inventory is then taken and the Judgment Debtor signs it, the original copy detached and handed to him.

The items so removed are kept at the appropriate place or sent directly to an Auctioneer.

'Execution can only be stopped either by the judgment debtor paying the amount involved or on receipt of a Motion for a Stay of Execution'

POSSESSION:

The difference here is not too extreme being that the belongings or Properties of the party who has refused or failed to give up possession is removed and the victorious party takes up possession.

GARNISHEE:

During or after the judgment had been given in a case and it comes to the Notice of the Judgment Creditor that certain amount of money is standing in

the accounts of the Judgment Debtor in a Bank or any other Institution, the Judgment Creditor can draw the attention of the Court by an Ex-Parte Application to such information. The Court/Judge, after satisfying itself of the authenticity of the said information, can order the Manager or any other person not to release or pay the said amount to the Judgment Debtor. **Subsequently, the Court may order the Bank to pay the money directly to the Judgment Creditor in satisfaction of the judgment costs.**

GENERAL REMARKS

The work of the Bailiff is very demanding you must therefore, be circumspect, discretionary and treat every case on its own merit especially, cases involving Chieftaincy, Land, Arrest and Labour related cases.

- It is therefore advisable that in cases where there is tension, you may in such situations; seek the assistance of the Police, through the Court.
- Even though it has been learnt from the preceding lessons that a Bailiff/Process Server can throw or leave a document at a Person, it is not always advisable or practicable to do so especially in some remote areas.
- A Process Server should as much as possible, EXPLAIN matters, rather than to ARGUE with Parties, since such argument may turn to jeopardize your position as an Officer of the Court.

GENERAL KNOWLEDGE:

As a Process Server, it is also necessary to get yourself abreast with some of the Court Terms and their usages.

1. Execution in relation to perishable goods - 3 days is allowed
 - a. Seizer - Involves personal effects.
 - b. Attachments - Involves Immoveable Properties

2. Mother Docket - Is the Original Docket, and Jacket is the one provided for as a supplementary for the Execution

3. Execution in respect of Moveables and other Goods – (7) Days allowed for Sale. Immoveable - 21 days.
4. Formal Decree - District Court; Entry of Judgment - High Court/Circuit Court
5. Conduct/Witness Money - Money paid to a Witness for his travelling Expense.