

THE ROLE OF THE REGISTRAR IN THE OPERATIONS OF BAILIFFS

INTRODUCTION

To be able to treat this topic effectively, the various duties the Registrar is supposed to perform should be considered. The Registrar first and foremost is the administrative head of the Registry and therefore has to ensure that all the various sections that make up the registry function well. The Registrar by definition is supposed to perform all the duties in the registry but since he cannot do everything by himself: he has to delegate some of the duties to the subordinate staff: but always bearing in mind that he will personally be held responsible for anything that goes wrong in the registry. The Registrar should therefore never neglect his supervisory role in the Registry so that he can call members of staff to order when they exceed their bounds.

The Court Registry consists of Six (6) sections and these are the pillars which support and put Registry in place.

1. The Correspondence/Receiving and Dispatching Section.
2. The Counter/Cashier.
3. The Docket Section.
4. The Bailiffs' Section.
5. The Court.
6. The Typing pool.

It is only when all these sections do their work efficiently that the public experiences a faster delivery of Justice. Of all the six (6) sections that make up the Registry, ***the most sensitive section is the Bailiffs' section.***

They can make or unmake the Court for if documents filed are not served promptly and service proved, cases cannot be heard in Court. It is the section, which can best be described as the "trouble spot" because most of the delays people complain about emanate from that section.

Since the Registrar is held responsible for any lapses or omissions, it is his duty to see to it that processes are promptly served and service proved. To avoid some of the problems associated with service and proof of service by Bailiffs, it is the duty of the Registrar to check all dockets going to Court for the week to ascertain whether there is proof of service of all documents in the dockets. So the Registrar is supposed to work in close partnership with the Bailiff from day one when an action is commenced till the day the case is finally disposed off.

In fact the work in the Registry can be compared to runners in a relay race if the baton is not passed on quickly to the next runner, the whole system suffers.

Let us now consider the work of Bailiffs in general: - according to Order 7(1) of C.I 47 of 2004, a document which is required to be served on a person shall be served by the Bailiff of the Court or a process server registered with the Court but a party may direct service.

HOW PERSONAL SERVICE IS EFFECTED

Personal service is usually made by the Bailiff or a registered process server by handing over the document intended for service personally to the person within named to be served, and at the request of the party so served, the Bailiff shall explain to such party the contents of the documents so served. But where the Bailiffs or process server charged with the service of the writ or document on any person is prevented by violence or threats of such person, or any other persons in concert with him from personally serving the writ or documents, it shall be sufficient to inform the person to be served of the nature of the writ or document and leave it as near such person as practicable.

It must be noted that when solicitors undertakes in writing to accept service and enters appearance, no service of any documents filed shall be required to be effected on the defendant. Service of any document on the solicitor of the person to be served is deemed to be proper service on such person. It should

however be noted that immediately judgment is delivered in a case, lawyers consider their obligations towards their clients completed and therefore refuse to accept service of documents on behalf of their clients. So after judgment had been delivered in a case all documents filed after that should be served on the parties. (E.g. Notice of Appeal and Motion for Stay of Execution, Notice to parties to settle record of appeal, etc.)

Service in civil cases shall not be made on Sunday, Good Friday, Christmas Day or the next after Christmas day (i.e. 25th and 26th December) and on any other public holiday.

In a Criminal cases, a Search Warrant of Apprehension (Arrest) or committal or for any other purpose, may be issued and executed on any Sunday or holiday, where the urgency of the case so requires.

DOCUMENTS NOT SERVED PERSONALLY

1. (C.1.47 Order 7 Rule 4) (1) Service of a document not required to be served personally may be effected in the following manner (a) by leaving it at the proper address of the person to be served or (b) by sending it by registered post bearing a return address and addressed to the person to be served at the address of the person, or (c) in such other manner as the Court may direct.
2. For the purpose of this rule, the proper address of a person on whom a document is to be served shall be the address provided by the person, but if at the time when service is effected the person has no address for service, the proper address of the person shall be in the case of an individual, his or her usual or last known place of residence or business.

SUBSTITUTED SERVICE

1. If a document is required to be served personally on any person and it appears to the court that:

- (a) Three or more attempts have been made without success to effect personal service may result in undue delay; or
- (b) It is otherwise impracticable for any reason to serve the document personally,

the court may make an order for Substituted service of that document.

2. An application for an order for substituted service shall be supported by an affidavit stating the facts on which the application is founded.
3. Substituted Service of document in relation to which an order is made under this rule, is affected by taking such steps as the court may direct to bring the document to the notice of the person to be served.
4. The court may direct substituted service to be effected in any of the following ways.
 - (a) By delivery of the document together with a copy of the order to some adult inmate at the usual or last known place of abode or business of the person to be served, or
 - (b) By delivery thereof to some person being an agent of the person to be served or to some other person provided it is proved that there is reasonable probability that the documents will through the agent or such other person, come to the knowledge of the person to be served or
 - (c) By notice put up on the Notice Board of the Court or some other public place in the District in which the cause or matter is commenced or by pasting copies at his last known place of abode.
 - (d) By advertisement in the media within the jurisdiction of the Court.
 - (e) An order for substituted service may be varied at any time with respect to the method of service directed by the order.

PROOF OF SERVICE

- 1) The Bailiff or the service provider who effected the service must prove execution and posting of every document filed in the registry. In respect of service of Writ of Summons and Hearing Notice, the endorsement is

made on the Original of the Writ or Hearing Notice. In other documents, the endorsement is made at the back of the Original document on the docket. This procedure is followed when a Bailiff of the court of issue effected the service. On the other hand, if a Writ or Hearing Notice was sent to a court outside the court of issue, the Bailiff who effected the service swears to an affidavit as to service or non service of the document. If the document could not be served for some reason, it is returned together with an affidavit of non-service to the court of issue.

Order 7 of (C.I 47) Rule 9 (1) states that an affidavit of service of a document must state by and on whom the document was served, the day of the week and the date and the hour on which it was served, and where it was served and how.

2. An affidavit of service of a document sent by registered post shall state by whom the document was posted, the registered number of the letter and the name of the person to whom the document was posted and the address to which the document was posted and the certificate of posting issued by the post office shall be exhibited with the affidavit.

RECORD AND PROOF OF SERVICE BY BAILIFF

1. A Process Book, in such form as the Judicial Secretary may direct shall be kept at every court for recording service of process by bailiffs and process servers.
2. Every entry in a Process Book or an office copy of it shall be prima facie evidence of the matters stated in it.

The procedure in respect of executions is quite different from service of ordinary documents. Writs of Fieri-Facias (Fifa) Possession etc. are executed and not served.

The Bailiff only brings the contents of the particular writ to the notice of the Judgment Debtor and physically enforces the legal requirements of the writ. If the writ is required to be executed outside the court of issue, the original writ is sent to the nearest court where the Judgment Debtor resides for the execution to be carried out.

Unlike Service of other documents, where service or no service may be proved by means of an affidavit or an endorsement on the original document, in executions Certificate of Execution or Non-Execution is endorsed on the original writ and returned to the court of issue.

The procedure for documents meant for posting is also different from the above-mentioned. In this case, the document is physically posted at the places named in the order. Posting of documents is proved by affidavit of posting. Apart from the affidavit sworn to by the Bailiff concerned, a copy of the document meant for posting is exhibited to an affidavit of such posting and is authenticated by the Registrar (Commissioner for Oaths) as being the true copy of the document posted.

Since the Registrar has a role to play in the operations of Bailiffs it is his duty to teach them the dos and don'ts in their s Sherivial duties because most of the blunders they commit are due to ignorance.

Now let us move on to the most difficult role the Registrar plays in the operations of Bailiffs. The enforcement or execution of judgments and court orders. In line with this task where there is any execution or enforcement of court orders, the Registrar becomes a Deputy Sheriff and the Bailiff becomes a Deputy Sheriff's Officer. The Registrar on his own accord cannot enforce or execute a judgment or an order of the court unless the victorious party or the party in whose favour an order has been made brings an application to set in motion the various legal options at his disposal through which an order for recovery or for the specific" pronouncements in the judgment can be carried out.

Let us now consider some of the legal options open to a victorious party seeking to execute or enforce a judgment or an order of the court.

1. A Victorious party in case depending upon the relief sought and granted may execute or enforce the judgment or order by any of the following processes:-

- (a) Writ of Fieri Facias (Fifa) (b) Writ of Sequestration
- (c) Writ of Possession
- (d) Writ of Attachment
- (e) Writ of Delivery
- (f) Garnishee Order
- (g) Summons to Show Cause
- (h) Order of Interim Injunction

2. Before a judgment or an order can be executed or enforced in a High Court or a Circuit Court, under the High Court Civil Procedure Rules (C.I. 47) of 2004, the Victorious party is required to file an "Entry of Judgment or Judgment after Trial". When an entry of Judgment or Judgment after Trial is filed, upon the necessary fees being paid, the Registrar should ensure that immediate steps are taken to serve a copy thereof on the Judgment debtor. This process is a reminder to the Judgment/Debtor that there is a court order to be obeyed.

3. In acting as the Deputy Sheriff the Registrar should ensure strict compliance of with the rules governing executions to avoid being sued for any lapses or omissions.

4. The Registrar should bear in mind that the life span of a writ of execution is one year from the date of issue and if therefore unexecuted within one year, execution can only take place by an application for leave by the court for another one year and from time to time be renewed. **(C.L 44 order Rule 9 (1) of 2004.)**

5. As already stated one area, which can easily land the Registrar and Bailiffs easily into trouble, is carrying out execution processes .Undue delay in an execution process gives advantage to the other party, thus making the

victorious party suspicious and also bring, the whole judicial system into disrepute. Before any execution takes place the following should be borne in mind. Necessity for leave to issue Writ of Execution. (C.I 47 Order 44 rule 9(1))

1. A writ of execution to enforce a judgment or order may not issue without leave of the court in the following cases: -

(a) Where six (6) years or more have elapsed since the date of the judgment or order

(b) Where any change has taken place, whether by death or otherwise in the parties entitled or liable to execution under the judgment or order.

(c) Where the judgment or order is against the assets of a deceased person coming into the hands of his or her executors or administrators after the date of the judgment or order and it is sought to issue against the assets.

(d) Where under the judgment or order, any person is entitled to relief subject to the fulfilment of any condition which it is alleged has been fulfilled, or

(e) Where any goods to be seized under a writ of execution are in the hands of a Receiver appointed by the court or a Sequester.

2. Where the court grants leave for the issue of a writ of execution and the writ is not issued within one year after the date of the order granting the leave, the order shall cease to have effect, without prejudice to the making of a fresh order.

ISSUE OF WRIT OF EXECUTION (C.I. 47 ORDER 44 RULES 7

1 The issue of a writ of execution shall be deemed to be issued when sealed by the Registrar.

2. Before such a writ is issued a request for its issue' shall be filed.

3. The request shall be signed by the person entitled to execution, if acting in person, or by the person's lawyer.

4. On receiving a request for the issue of a writ of execution, the Registrar shall make a note of the request and of the date and hour when it is received for filing.

5. The Registrar may at any time seek the direction of the court as to any request for the issue of a Writ of Execution and may meanwhile decline to issue the writ.

6. No writ of execution shall be sealed unless at the time it is tendered for sealing, the Registrar is satisfied that the period if any specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.

7. No writ of execution shall be sealed unless at the time it is tendered for sealing the person tendering it produces:

(a) The judgment or order on which the writ is to be issued or an office copy of it.

(b) The Order granting leave or evidence of the granting of it where the writ may not issue without leave of the court.

(c) The Written permission of the Bank of Ghana therein referred to where rule 8 (2) applies.

(Order 8 Rules 2) Where the Bank of Ghana has given such permission conditionally or on conditions which have been complied with the request for the issue of a writ of execution to enforce the judgment or order in question shall be indorsed with a certificate of that fact.

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8. The Registrar shall indorse on every writ of execution, the date of the day on which it is issued.

9. Unless the court otherwise directs, Writs of Execution shall be issued in the order in which they are applied for.