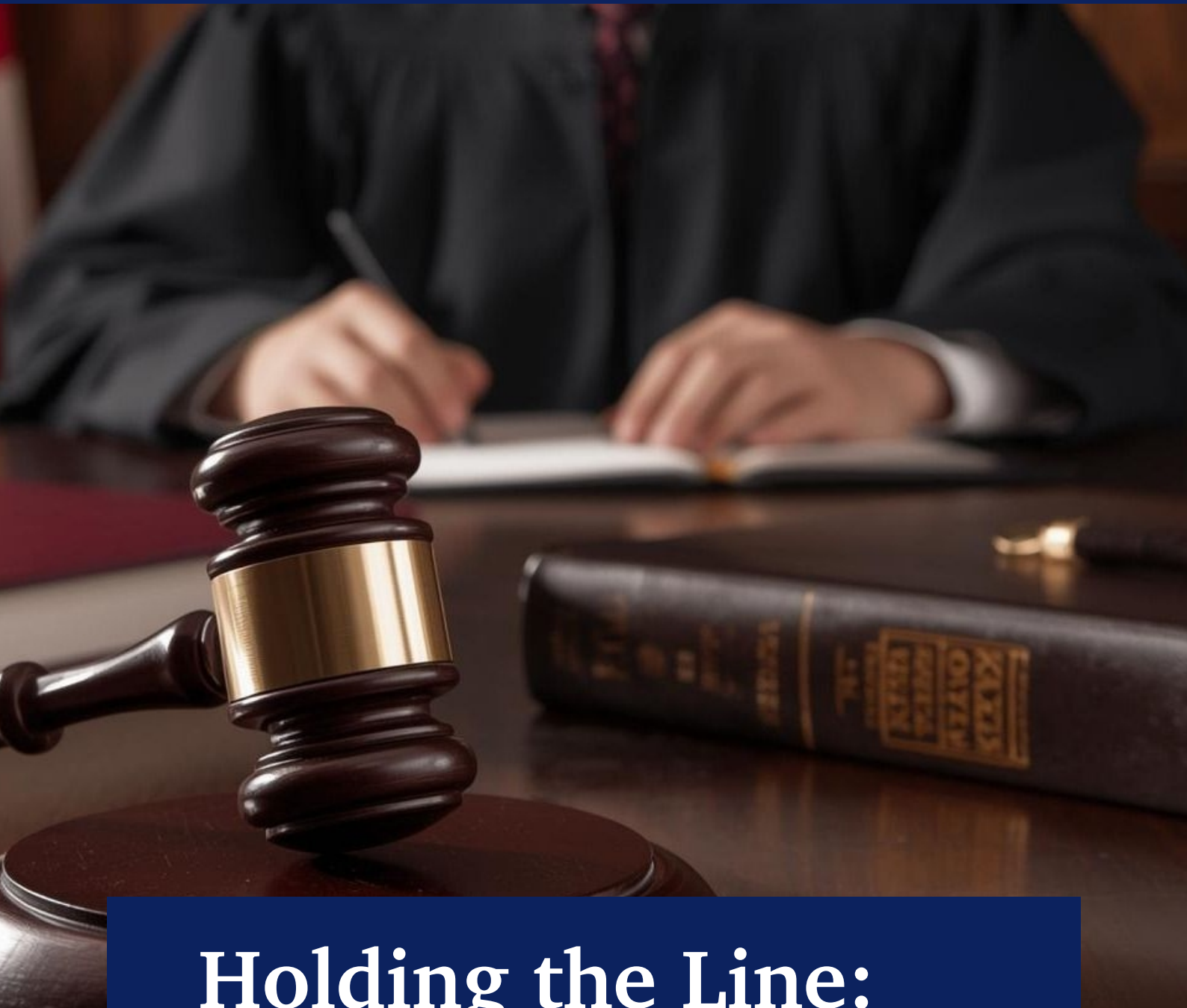




TOPE ADEBAYO LP



Holding the Line:

A Practical Guide to Contempt Proceedings in Nigerian Courts

Vol II

Introduction

In Volume I, we explored the constitutional underpinnings of committal proceedings in Nigeria, revealing, perhaps unsurprisingly to the seasoned practitioner, the doctrinal tensions inherent in a mechanism often characterised as criminal in nature, yet paradoxically set in motion through civil procedures by private litigants. We further examined the ambiguity surrounding prosecutorial authority and the institutional deficiencies that have increasingly undermined the efficacy of committal proceedings as an enforcement tool.

Volume II here brings those findings to ground level, transitioning from theoretical discourse to practical application. It examines the statutory framework under the Sheriffs and Civil Process Act, the procedural significance of Forms 48 and 49, and the often unsettled interplay between the Act and the various Rules of Court across Nigerian jurisdictions. It also brings up decisions from the Supreme Court that seem to have laid this matter to rest, not holistically but to an extent, establishing how constitutionally inadequate the current framework in written law is.

1. Procedural Frameworks for Initiating Committal Proceedings for Contempt Ex Facie Curiae

a. Criminal Procedure

Judicial pronouncements exist on the criminal nature of prosecuting contempt ex facie curiae. In *Fawehinmi v. State*,¹ the Court of Appeal held that for contempt ex facie curiae, the full criminal procedure

must be followed: the offender must be arrested, a formal charge stating the specific section of law under which they are charged must be drafted, a plea taken, witnesses called, and the matter tried before a different judge from the one whose authority was allegedly defied.² The court further held that any hybrid procedure — one that is neither truly summary nor a properly conducted criminal trial — is wrong in law because where a man's liberty is at stake, every requirement of the law must be strictly complied with.³

In Omoijahe v. Umoru,⁴ in like manner, the Supreme Court affirmed that contempt ex facie curiae, being criminal in nature, cannot be punished summarily. The proper procedure is for the contemnor to be arrested, charged before another court, subjected to a full criminal trial, and — only if found guilty — punished according to law. A charge and plea are necessary, and the accused is entitled to a fair hearing.⁵

With these decisions, among a range of others holding the same, there should be no confusion on what procedure to follow when bringing a case for contempt ex facie curiae. However, the established legal framework / written law says otherwise.



¹ (1990) 5 NWLR (Pt.148) 42

² *ibid* P. 76, paras. D-F

³ Page 83, paras. A-C

⁴ (1999) 8 NWLR (Pt. 614) 178

⁵ *ibid* Page 189, paras. F-G

b. Sheriffs and Civil Process Act

Under the Sheriffs and Civil Process Act, the following is the established framework required to bring a case for contempt *ex facie curiae*:

i. Issuance and Service of the Notice of Consequences of Disobedience to Court Order (Form 48)

Form 48, as prescribed under the Sheriffs and Civil Process Act, constitutes a fundamental procedural instrument which must be issued by the court registrar. It contains a clear and express warning that non-compliance with a subsisting court order amounts to contempt of court, punishable by imprisonment.

A critical requirement of the procedure is that the order alleged to have been disobeyed must be endorsed on the reverse side of Form 48 and not merely attached as a separate document. Furthermore, the Form must be duly signed by the court registrar and personally served on the alleged contemnor by the court's bailiff. Proof of such service must thereafter be filed before the court, thereby completing this essential procedural step.⁶

ii. Issuance and service of the Notice to Show Cause Why Order of Committal Should Not Be Made (Form 49)

This step can only be taken after two clear days have elapsed following the service of Form 48.⁷ As the court observed in *Ojeme v Momodu III*,⁸ the

rationale for this waiting period is to afford the alleged contemnor an opportunity to comply with the subsisting court order, thereby obviating the need for committal proceedings. Form 49 must likewise be issued and signed by the court registrar, and not by counsel, and must be personally served on the alleged contemnor.⁹ In *Obiukwu v Ugwuweruchukwu*,¹⁰ the Court of Appeal allowed the appeal and set aside a conviction for contempt on the ground that Form 49 had been improperly issued and signed by the respondent's counsel rather than the court registrar.

iii. Filing a Motion on Notice for committal

The third stage involves filing a Motion on Notice for committal, which must be supported by an affidavit that clearly sets out the facts constituting the alleged contempt. The affidavit should also specify the reliefs sought and outline the grounds upon which the application is based. This procedural step ensures that the alleged contemnor is properly informed of the case against them and the precise orders being sought from the court.

Accordingly, the court may only proceed to determine an application for committal for contempt upon the due completion of all three procedural stages outlined above. Any failure to comply strictly with these requirements is fatal and renders the

⁶ Order 9 Rule 13, Judgments (Enforcement) Rules

⁷ Ibid

⁸ (1995) 6 NWLR (Pt. 403) pages 597-598, paras. D-A

⁹ Lawpavilion and Lawpavilion, "PRINCIPLES GUIDING COMMITTAL FOR CONTEMPT OF COURT - LawPavilion Blog" (LawPavilion Blog - No 1 legaltech resource in Africa, March 4, 2019) <https://lawpavilion.com/blog/principles-guiding-committal-for-contempt-of-court/>, accessed 19 May 2026

¹⁰ (2019) LPELR-46616(CA) Pp. 20-25 paras. E

entire committal proceedings incompetent and liable to be set aside.¹¹

c. Rules of Court

Despite the procedural framework under the Sheriffs and Civil Process Act (SCPA), there is more confusion when the relevant Rules of Court are examined.

For example, a reading of Order 46 Rule 8 of the High Court of Lagos State (Civil Procedure) Rules, 2019 and Order 35 Rule 1 of the Federal High Court (Civil Procedure) Rules, 2019 shows that proceedings for contempt *ex facie curiae* may be commenced simply by filing a motion on notice supported by affidavit, with no mention of Forms 48 and 49 and equally no mention of the criminal procedure that the courts have held to be judicially required.

2. Procedural Ambiguities and Complexities based on the different Frameworks

A first look at the different frameworks applicable under law to contempt *ex facie curiae* reveals the inherent conflicts that exist, because when a lawyer is engaged to bring a case for contempt *ex facie curiae*, what route does he follow? What route is constitutionally safe? The confusion stems from several factors:

a. Legislative hierarchy: The SCPA is a federal primary legislation enacted by the National Assembly, whereas the Rules of Courts are subsidiary legislation issued by the Chief Judges

of the respective courts under Section 274 of the Constitution. Technically, primary legislation should take precedence but despite knowing this, the courts have still gone ahead to create their own procedural framework for initiating committal proceedings.

b. Practical implications: Some practitioners may file committal applications relying only on the court rules. In such cases, the contemnor's counsel can raise a preliminary objection that the proceedings are defective for failure to serve Forms 48 and 49, as required by the SCPA.

c. Judicial enforcement: Courts, following other binding precedents such as that in *Sunday Ape v. Disu Olomo*,¹² can set aside such committal proceedings as nullities. In that case, the Court of Appeal held unequivocally that *“It is the law that merely filing a motion on notice to commit, as was done in the present case, without serving Forms 48 and 49 on the Appellant is defective and renders the application null and void and of no effect.”*¹³

The confusion from judicial enforcement goes even further upon discovering that the Supreme Court which had held in *Omoijahe v. Umoru* (1999) that criminal procedure is the way to go for contempt *ex facie curiae*, recently upheld the procedures under the SCPA and High Court Rules as valid in bringing a case

¹¹ *Oyeyinka v. Osague* [1994] 2 NWLR pages 633-634, paras. G-A; *F.C.M.B. v. Abiola & Sons Ltd.* [1991] 1 NWLR P.30, paras. D-F

¹² (2010) LPELR-4988(CA) Pp. 21-31, paras. E-D. Also see *Odu v. Jolaoso & Ors* (2002) LPELR-6008(CA) (Pp. 8-15 paras. B-B)

¹³ *Ibid*

for said contempt. In *BPE & Anor v. BFI Group Corp (2024)*,¹⁴ the Supreme Court held that the issuance and proper personal service of Forms 48 and 49 under Order IX Rule 13 of the Judgment Enforcement Rules are fundamental elements of due process in committal proceedings that go to the root of the case and to the jurisdiction of the court. Notably, the court even drew a distinction between committal procedure and an ordinary criminal trial, describing the former as “a special procedure to expeditiously deal with a recalcitrant person” once the court is satisfied that a valid order exists and notice in Form 48 has been properly served.

- d. Harmonization gap:** No formal harmonisation among the three frameworks given in the SCPA, the various Rules of Court, and judicial pronouncements has ever been undertaken, creating a procedural minefield that can easily frustrate judgment creditors.

Beyond these complexities, there are additional loopholes under the already-upheld SCPA that, in practice, tend to operate in favour of alleged contemnors, particularly in the following respects:

- a. Personal service requirement:**

The SCPA mandates the personal service of Forms 48 and 49 on the alleged contemnor¹⁵ and where personal service cannot be effected, the committal process is effectively stalled. This is because Order IX Rule 13 requires that Forms 48 and 49 be

served in the same manner as a judgment summons, and Order IX Rule 5 further provides that a judgment summons “shall” be served personally. The combined effect of these provisions is that personal service is mandatory, leaving no room for substituted service under the SCPA framework.

But the practical consequence of this strict requirement is concerning. It means a contemnor who is already disobedient to a court order can, by simply avoiding service, obstruct the entire committal process. Meanwhile, the judgment creditor — despite having lawfully obtained a court order — lacks an effective method of enforcement.

- b. The endorsement technicality:**

Order IX Rule 13 of the SCPA's Judgment Enforcement Rules mandates that the court order be endorsed on the reverse side of Forms 48 and 49 at the point of service. In *Ikomi v. Omanuli*,¹⁶ the court held it fatal for the order to be merely attached rather than endorsed. While this requirement is no doubt intended to ensure procedural certainty, the distinction does not, in substance, affect the contemnor's notice or awareness of the order, yet it remains an avenue through which otherwise meritorious committal proceedings may be defeated on purely technical grounds.

¹⁴ (2024) LPELR-62011(SC) (Pp. 15-22 paras. F)

¹⁵ Order IX, Rule 13 Judgment (Enforcement) Rules.

¹⁶ (1995) 3 NWLR (Pt 383) 355 at pg. 365 para. A-F

c. Registrar's signature requirement:

Forms 48 and 49 must be issued and signed by the court registrar, not by the applicant's counsel. In *Obiukwu v. Ugwuweruchukwu*,¹⁷ the Court of Appeal set aside a contempt conviction on this ground alone. As with the endorsement requirement, the identity of the signatory does not affect the substance of the notice conveyed to the alleged contemnor, yet non-compliance has repeatedly provided a basis for invalidating proceedings, compelling judgment creditors to recommence the entire process at considerable cost and delay.

d. Exclusion of money judgments from committal proceedings:

A further limitation arises from section 72 of the SCPA, which expressly confines committal proceedings to orders “other than for payment of money.” This means the most common category of judgment — monetary awards — is entirely excluded from this enforcement mechanism. Now, while this restriction is grounded in the long-standing principle against imprisonment for debt,¹⁸ the more pressing concern is the practical inadequacy of the alternatives.

In Nigeria, garnishee proceedings, writs of fieri facias, and judgment summons are often slow and unreliable, and even though initiating insolvency proceedings has

emerged as a viable option, such proceedings are designed primarily to distribute assets among all creditors, not to satisfy one creditor's judgment specifically. So, the combined effect of these factors is that judgment creditors holding monetary awards remain without access to the most coercive enforcement tool available — committal — and the available substitutes frequently fall short.

Taken together, all these procedural limitations, technical requirements and complexities create a framework that places significant obstacles in the path of judgment creditors, while affording alleged contemnors multiple avenues of escape. In the absence of definitive guidance from the Supreme Court or legislative reform by the National Assembly, these challenges are likely to persist, with continuing implications for the efficacy of judgment enforcement in Nigeria.



¹⁷ (2019) LPELR-46616(CA) Pp. 20-25, paras. E-B

¹⁸ Neil L. Sobol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons*, 75 Md. L. Rev. 486 (2016). Available at: <https://scholarship.law.tamu.edu/facscholar/727>

3. Comparative Analysis: Committal Proceedings in Selected Jurisdictions.

The challenges associated with the enforcement of judgments and the conduct of committal proceedings are not unique to Nigeria. However, several jurisdictions have undertaken significant procedural reforms that offer useful points of reference. A notable reference is England and Wales — the jurisdiction from which much of Nigeria's procedural framework is historically derived — where the law on contempt has been streamlined and modernised.

In England and Wales:

a. A unified procedural framework:

All contempt proceedings are governed by one consolidated framework which is Part 81 of the English Civil Procedure Rules 1998.

b. Flexibility in the service of processes:

The courts are empowered to authorize alternative methods of service where personal service is impracticable or has been deliberately evaded. In *Smith v. Kirkegaard*,¹⁹ the English Court of Appeal affirmed that substituted or alternative service may be permitted where it is likely to bring the proceedings to the defendant's attention. This position is reinforced by Part 81.4(2)(d), which allows the court to dispense with personal service, subject to the requirement that the order granting such dispensation be reflected in the committal application.

c. Proceedings in the absence of the defendant:

Under Part 81.4(2)(o) of the English Civil Procedure Rules, the court may proceed with contempt proceedings in the absence of the defendant, provided it is satisfied that adequate notice has been given. While the standard of proof remains beyond reasonable doubt, the non-attendance of the alleged contemnor does not frustrate the proceedings.

In the United States of America:

The contempt power of United States courts derives from both their inherent judicial authority and statute. Under 18 U.S.C. § 401,²⁰ federal courts are empowered to punish by fine or imprisonment any contempt of their authority, whether consisting of misbehaviour in the court's presence, disobedience of its lawful orders, or resistance to its process. The Supreme Court has long affirmed that this power is essential to the preservation of order in judicial proceedings and to the enforcement of judgments.

Two illustrations are instructive. In *United States v. Donziger*,²¹ Steven Donziger was a lawyer who secured a \$9.5 billion judgment against Chevron on behalf of Ecuadorian villagers for environmental damage. Chevron subsequently obtained court orders in the US requiring Donziger, entirely outside of court, to comply with post-judgment discovery, surrender his electronic devices for forensic inspection, and surrender his passports. He repeatedly and deliberately refused to

¹⁹ [2024] EWCA Civ 698; "Smith v Kirkegaard, England and Wales Court of Appeal (Civil Division), Judgment, Law, Casemine.Com" (<https://www.casemine.com/https://www.casemine.com/judgement/uk/667869b7aee14939e0a3dc0d>)

²⁰ Formally titled "Power of court", found in Title 18 (Crimes and Criminal Procedure) of the United States Code 1948

²¹ *United States v. Donziger*, 38 F.4th 290 (2d Cir. 2022), cert. denied, 598 U.S. — (2023)

comply. In May 2019, the court first held him in civil contempt for violations of permanent injunctions and failure to comply with the forensic protocol order, imposing escalating daily fines. When he continued to defy the orders — neither paying the fines nor surrendering his passports nor complying with the forensic protocol order — criminal contempt proceedings were initiated on six counts in July 2019. He was convicted on all six counts on 26 July 2021, and the Second Circuit upheld the conviction on 22 June 2022. The Supreme Court denied certiorari on 27 March 2023.

An equally striking illustration arose in the *Matter of Darrell Jarrell*.²² The defendant appeared before Washtenaw County Judge Cedric Simpson on a misdemeanour trespassing charge and, in a display of open defiance, repeatedly directed profanity at the judge during the hearing. Invoking the court's inherent power to punish direct criminal contempt summarily, Judge Simpson imposed a separate contempt sanction for each successive outburst, ultimately sentencing the defendant to 558 days in jail without the need for any further evidentiary proceedings.

In South Africa:

South African courts similarly derive inherent jurisdiction to punish contempt, grounded in the imperative to maintain public confidence in the judiciary and uphold the integrity of court orders. Contempt of court in South Africa encompasses both civil contempt (willful

disobedience of a court order) and criminal contempt (conduct that scandalises or disrespects the court's authority), and both attract significant sanctions.

In Secretary of the Judicial Commission of Inquiry into Allegations of State Capture v. Jacob Gedleyihlekisa Zuma,²³ the Constitutional Court sentenced former President Zuma to fifteen months' direct imprisonment for willfully defying court orders compelling his attendance and cooperation before the Zondo Commission of Inquiry into State Capture. The Court rejected any notion that the contemnor's political standing or public profile could mitigate the consequences of deliberate non-compliance.

These comparative illustrations share a common thread: in each jurisdiction, the procedural framework for contempt is designed to serve enforcement, not frustration. The underlying philosophy is one of substance over form, while Nigeria's framework, by contrast, remains fragmented, technically demanding, and, as the foregoing analysis shows, practically unsettled. The point is not that Nigeria must replicate any model from these countries, but that a coherent enforcement mechanism is achievable, and the present situation is not an inevitability – it is a choice.

²² 14A District Court, Washtenaw County, Michigan (August 7, 2024); see also 18 U.S.C. § 401; Fed. R. Crim. P. 42(b)

²³ [2021] ZACC 18 (CCT 52/21)

4. Priority of Applications: Contempt vs. Jurisdiction

A particularly intricate procedural issue that can arise when a party is alleged to be in contempt is that party's challenge to the court's jurisdiction in the substantive suit or in the committal proceeding itself. In such circumstances, the question presents itself: which issue ought the court to determine first — the jurisdictional challenge or the allegation of contempt brought against the contemnor?

The orthodox position in Nigerian jurisprudence is that jurisdiction is a threshold issue which must be resolved before any other matter. In *Madukolu v. Nkemdilim*,²⁴ the Supreme Court laid down the foundational principle that jurisdiction and competence are fundamental to adjudication. This position has been consistently reaffirmed, more recently in *Ajaokuta Steel Co. Ltd v. Greenbay Investment*,²⁵ where the Court emphasised that jurisdiction remains central to any matter before a court, and once challenged, must be determined before further proceedings can be undertaken.

Notwithstanding this settled principle, the Supreme Court, in *Ebhodaghe v. Okoye*,²⁶ recognised an important exception in the context of contempt proceedings. The Court held that where a party is in contempt of a subsisting order of court, the court may, in appropriate circumstances, address the contempt before considering any jurisdictional objection. The rationale is grounded in

the equitable principle that a party who stands in disobedience of a court order ought not to be heard in seeking relief from that same court. In this regard, the court's inherent power to preserve its authority and dignity may take precedence over preliminary objections to jurisdiction.

However, this principle is not without limitation. While it may apply predominantly to cases of contempt in *facie curiae*, which may be dealt with summarily, instances of contempt *ex facie curiae*, which require a full evidential inquiry, may limit the application of the principle.

In *Dangote v. A.P. Plc & Ors*,²⁷ the Court of Appeal, per Danjuma, J.C.A., affirmed as follows:

'However, where the contempt is committed ex-facie curie, i.e. outside the face of the Court, it cannot be tried brevi manu; thus, this constitutes an exception where the Court would need to first determine and decide on whether it has jurisdiction or not. This would have to be done first before it assumes jurisdiction to try for contempt. Aside contempt in facie curie, the law is that once jurisdiction is raised in challenge, the Court has a duty to determine that issue first before proceeding.'

At a conceptual level, this distinction is defensible. If a court is ultimately found to lack jurisdiction, any order it purportedly made would be void *ab initio*, and it would be logically inconsistent to found contempt proceedings on such an order. Similarly, a

²⁴ (1962) 1 All NLR (Pt. IV) 587 at 589, 595

²⁵ (2019) 8 NWLR Pt. 223, Pp. 367-368, paras. B-D

²⁶ (2004) 18 NWLR Pp. 494-495, paras. H-B

²⁷ (2012) LPELR-7974(CA) Pages 35–37 Paragraphs F-A

procedural anomaly in commencing the committal proceedings leaves room for a different jurisdictional challenge. However, the practical implications of this approach are less satisfactory. It creates a potential avenue for abuse, whereby an alleged contemnor may raise a jurisdictional objection, whether meritorious or otherwise, as a tactical device to delay or frustrate committal proceedings.

5. Practical Considerations for Legal Practitioners

Pending much-needed legislative and judicial clarification, legal practitioners seeking to initiate committal proceedings to enforce judgments, rulings, or orders in Nigeria must carefully treat compliance with the SCPA framework strictly, so long as the order sought to be enforced is not one for monetary payment, considering the limit set by Section 72 of the SCPA.

Where a practitioner elects to proceed by way of criminal process, they should engage the criminal courts, ensure a charge is properly laid, and that the alleged contemnor is arraigned and afforded a full opportunity to plead, in accordance with the Administration of Criminal Justice Act 2015 or the relevant state equivalent. Where, however, a practitioner proceeds under the existing

civil framework with awareness of its technical limitations, strict compliance with all SCPA and High Court requirements remains essential. In situations where personal service is impractical due to intentional evasion, practitioners may consider filing an ex parte application with the court, supported by credible evidence of such evasion, to obtain appropriate directions.²⁸

6. Proposed Legislative and Institutional Recommendations for Effective Judgment Enforcement

To address the persistent challenges in the enforcement of judgments and committal proceedings in Nigeria, a comprehensive and forward-looking reform framework is imperative.

- i. First, the National Assembly should undertake a fundamental overhaul of the Sheriffs and Civil Process Act, 1945 (SCPA), either by way of a far-reaching amendment or its complete repeal and replacement with a modern Judgment Enforcement framework suited to contemporary realities. Such legislation should, at a minimum:



²⁸ Order 35 Rule 2(2) of the Federal High Court (Civil Procedure) Rules 2019 provides that “Notice of Motion, affidavit, grounds and a written address shall be served personally on the person sought to be committed except where upon leave of court, personal service may be dispensed with by substituted service”.

- Introduce flexible and alternative modes of service in circumstances where personal service is impracticable;
- Clearly define the status and applicability of Forms 48 and 49, particularly in relation to the Rules of Court and Criminal procedure, if they are to be retained;
- Extend the scope of committal proceedings to cover monetary judgments, including mandatory disclosure of assets by judgment debtors; and
- Make provision for what the courts will do in the absence of a contemnor who deliberately evades service or appearance. Note that this recommendation reflects why any reformed framework must take a definitive position on whether committal proceedings for contempt *ex facie curiae* are to be governed by civil or criminal procedure — because the answer determines everything about what happens when a contemnor evades service or refuses to appear.

If the criminal route is adopted, consistent with the judicial position in *Fawehinmi v. State and Omoijahe v. Umoru* — that arraignment, charge, and plea are required — then proceedings in the accused's absence become legally untenable. Arraignment presupposes physical presence, and a plea cannot be taken in *absentia*. The implication is that enforcement would depend on the

state's ability to compel attendance through arrest warrants and prosecutorial machinery, and a contemnor who evades process can, in practice, frustrate enforcement indefinitely until physically apprehended.

If the civil route is adopted, proceedings in the absence of the contemnor become defensible, provided there is satisfactory proof of service — whether personal or substituted — and the standard of proof beyond reasonable doubt is maintained throughout. This approach prioritises the enforcement interests of the judgment creditor and prevents deliberate evasion from frustrating the process entirely.

The two routes cannot coexist, and any framework that attempts to blend them risks the procedural infirmity that the existing law already suffers.

- ii. Upon the enactment of a reformed legal framework, the Chief Judges of the various courts must take coordinated steps to harmonise their respective Civil Procedure Rules with the new regime. This will reduce the procedural uncertainty and inconsistency that currently characterises the field and promote consistency in the administration of justice across jurisdictions.

- iii. On the other hand, pending full legislative reform, the Supreme Court can consider issuing a Practice Direction or consolidated ruling that authoritatively prescribes the judicially compliant procedure for contempt *ex facie curiae* proceedings, providing practitioners with a single reliable reference point in the meantime.

7. Current State of Nigerian Jurisprudence on Committal Proceedings

- a. *Fawehinmi v. State*:²⁹ The Court of Appeal held that contempt of court divides into two distinct categories — *in facie curiae* and *ex facie curiae* — each attracting a different procedure. For contempt *in facie curiae*, the court may act summarily and immediately, without issuing a warrant, framing a charge, or taking a plea. For contempt *ex facie curiae*, however, the full criminal procedure must be followed: warrant or enrolled order, arrest, a formal charge stating the section of law under which the accused is charged, plea, witnesses, and trial before a different judge from the one whose authority was allegedly defied. The court further held that any hybrid procedure — one that is neither truly summary nor a full criminal trial — is wrong in law.
- b. *Omoijahe v. Umoru*:³⁰ The Supreme Court affirmed that contempt *ex facie curiae*, being criminal in nature, cannot be punished summarily. The proper procedure is for the contemnor to be arrested, charged before another court, and subjected to a full criminal trial; only if found guilty may they be punished according to law. In such cases, a charge and plea are necessary and the accused is entitled to a fair hearing of the case against them.
- c. *Sunday Ape v. Disu Olomo*:³¹ The Court of Appeal held that the mere filing of a motion on notice to commit, without prior issuance and personal service of Forms 48 and 49 on the alleged contemnor, is fundamentally defective and renders the committal application null and void. The court affirmed that compliance with the SCPA framework — including the issuance and service of Form 48 as a notice of the consequences of disobedience, followed by Form 49 — is not a procedural formality that can be bypassed by recourse to the Rules of Court alone. A motion on notice, however properly filed, cannot substitute for these foundational steps.
- d. *BPE & Anor v. BFI Group Corp*:³² The Supreme Court affirmed that the issuance and proper personal service of Forms 48 and 49 under Order IX Rule 13 of the Judgment Enforcement Rules are elements that go to the root of the case and to the jurisdiction of the court, not mere formalities.

²⁹ (1990) 5 NWLR (Pt.148) 42

³⁰ (1999) 8 NWLR (Pt. 614) 178

³¹ (2010) LPELR-4988(CA) Pp. 21-31, paras. E-D

³² (2024) LPELR-62011(SC) (Pp. 15-22 paras. F)

- e. *Dangote v. A.P. PLC & Ors*:³³ The Court of Appeal clarified the limitation on the Ebhodaghe principle, holding that where contempt is committed *ex-facie curiae*, it cannot be tried summarily. The court must first determine whether it has jurisdiction to try the overall matter before assuming jurisdiction to try for contempt. This process does not apply in cases of contempt *in facie curiae*.
- f. *Abbas v. Solomon*:³⁴ The Supreme Court reaffirmed that contempt proceedings cannot be used to enforce money judgments or orders, stating that where an order is for payment of money, other enforcement methods, such as writ of *fieri facias*, garnishee proceedings, or charging order, become necessary.



Conclusion

The foregoing analysis reveals that the difficulties attendant to committal proceedings in Nigeria are systemic rather than incidental. The existing frameworks — marked by the uneasy interaction between the Sheriffs and Civil Process Act and the various Rules of Court, rigid technical requirements, and inconsistent judicial pronouncements — have produced a regime in which enforcement is often undermined by procedure. The cumulative effect is a system that places disproportionate burdens on judgment creditors while affording contemnors multiple procedural avenues to evade compliance, thereby undermining the Court's authority.

Comparative experience demonstrates that a more coherent and effective approach is achievable. The need, therefore, is not for incremental adjustments but for deliberate and comprehensive reform that addresses the deficiencies directly, rather than merely rearranging the existing procedural furniture.

Ultimately, the authority of the courts depends not only on the issuance of judgments but also on the existence of a reliable, constitutionally sound mechanism for enforcing them. A framework that leaves enforcement vulnerable to challenge whether on the technical grounds explored in this article or on the more fundamental legal grounds identified by the courts, risks undermining public trust in the justice system itself. The clear priority is to restructure committal proceedings so that they rest on a constitutionally and practically unassailable foundation, capable of serving as the dependable enforcement mechanism for upholding what the rule of law demands.

³³ (2012) LPELR-7974 (CA) Pages 35 – 37 Paragraphs F-A

³⁴ [2001] 15 NWLR P 166, paras. D-F

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