

The Role of the Authorities Charged with Forceful Execution of Court Judgments Under OHADA

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ABSTRACT: Once a judgment has been delivered by the court of law, the next issue in view is its execution. The execution of a judgment is not always easy. This has often met with stiff resistance on the part of the judgment debtor. Where the judgment debtor fails to voluntarily comply, the judgment creditor is constrained to have recourse to coercive measures in order to reap the benefits of his judgment. This entails soliciting the intervention of some authorities empowered by law to lend assistance to the execution process. In the absence of these judicial stakeholders who assist in the execution process, justice cannot be seen to be done in a matter. This article sets out to identify the various actors or authorities empowered by law to lend assistance in furtherance of the execution process. It also articulates their respective roles in this process to ensure that a victorious plaintiff is restituted in his rights as ordered by the court in the judgment. The paper rounds up with some recommendations which if implemented by the OHADA draftsman, may go a long way to improve on the due process of execution of court judgments within the member states of the OHADA supranational body.

Keywords: Role, Authorities, forceful execution, court judgments, OHADA.

I. INTRODUCTION

The execution of judicial decisions is the final stage in the litigation process wherein the rights, claims and interests of the plaintiff have been determined in finality by a competent court, and converted into an enforceable instrument which may take the form of a judgment,¹ ruling, order or an arbitral award. It is the end process of a dispute where the successful party is expected to be re-instated into his/her legal rights. Execution is the process of giving effect to the court's judgment. According to the celebrated Lord Denning in *Re Overseas Aviation Engineering (GB) Ltd*,²

Execution means quite simply the process for enforcing or giving effect to the judgment of the court..... In case when execution was had by means of a common law writ, such as fieri facias ...it was legal execution; when it was had by means of an equitable remedy, such as the appointment of a Receiver, then it was equitable execution because it was the process for enforcing or giving effect to the judgment of the court.

Through the process of execution, the judgment creditor who is the successful party, reaps the fruits of the judgment. This is the penultimate function of litigation. Execution is at the center of all investment endeavours worldwide. This is because, the pulse or heartbeat of any economy will be measured by the possibility of enforcing a judgment delivered by the courts in favour of one party. The cost and time taken to execute a court judgment is suggestive and indicative to potential foreign investors, whether that country possesses a conducive and attractive environment for doing business.

The World Bank perceives the process of execution of court judgments as one of the measuring parameters in their classification of countries with better investment incentives, following its Annual Report of Doing Business.³ Any potential investor desirous of doing business within any of the OHADA member states will be anxious to have fore knowledge of the legal protection put in place for the enforcement of any court judgments in the event of litigation.

Justice will not be said to have been done if after an elaborate and fair trial, the resultant judgment remains a dead letter. Unless the law is enforced through the process of execution, the beauty, elegance and sophistication that it carries remain meaningless.

The importance of executing judgments awarded by the courts in favour of a party to legal proceedings cannot be over emphasised. That is why at common law, all court judgments were automatically executed following the rule in *Clinfton Securities Ltd v. Huntley*.⁴ In this case, the legal principle was adequately adumbrated to the effect that the judgment creditor is entitled to enjoy the fruits of his judgment. Execution could only be stayed if the judgment debtor showed proof of exceptional circumstances that justify the deprivation of the judgment creditor of the fruits of his judgment.⁵

¹. The word "judgment" in its wider and generic sense is often used to denote all forms of judicial decisions. Article 33 of the UASRPME provides an exhaustive list of what constitutes an executory instrument within the meaning of the OHADA litigation.

². (1963) Ch. 24, pp.39-40.

³. L., Asuagbor, (2012) *identifying the judge in- charge of litigation relating to the execution of judgments*, p.2.

⁴. (1948), 2 All ER 238.

⁵. *Lagos State Dev't & Property Corpn. v. Citymark (West Africa) Ltd*. Suit No.S.C.27/92 (2002), Q.R.R. p.201.

Bowen L.J. had expressed this principle in England as far back as 1886 in the following words; “*a winning plaintiff or party has a right to the fruits of his judgment and the courts will not make a practice at the instance of an unsuccessful litigant of depriving a successful one of the fruits of the judgment in his favour*”.⁶

If the judgment creditor has to benefit from the fruits of his judgment, the assistance of the respective authorities responsible for forceful execution of court judgments is mandatory. This article therefore examines and identifies the various authorities who are empowered by law to assist the judgment creditor in the execution of his court judgment. It also extrapolates the respective roles of these authorities in this final process of justice.

II. Authorities charged with forceful execution

The judgment creditor may solicit the intervention of the Sheriff-Bailiff, the Legal Department, the administration, third parties, the forces of Law and Order, the State and even the Legal Practitioner to compliment their efforts and lend support towards the execution process. The role each of these authorities play in the execution of court judgment shall be succinctly analysed hereunder.

1. The Bailiff

The OHADA law does not define the term Sheriff-Bailiff. A Sheriff is an elected peace officer who in most jurisdictions acts as custodian of the county jail, executes civil and criminal process, and carries out judicial mandates within the county.⁷ Under the Common Law, a Sheriff was the Inspector General of Police,⁸ assisted by a Deputy Sheriff.⁹

The principal enactment that regulates the profession of Bailiffs in Cameroon is Law No.79/448 of 5th November 1979.¹⁰ By this Law, a Bailiff is an auxiliary of justice appointed by Presidential decree to perform certain functions at the behest of the parties or the Legal Department towards instituting proceedings in court. They carry out service of summonses, and other services required for commencing proceedings in court. They also execute court judgments and all acts susceptible to execution, draw up reports, issue all acts and writs necessary for the execution of court orders, and production of detainees before the court.¹¹ The Bailiff also carries out auction sales especially in respect of movables. When he operates in respect of auction sales, he can be called Auctioneer.

In matters of forceful execution, the UASRPME gives the Bailiff the sole monopoly by assigning certain obligations to enable him better dispense his job. From the above, it is clear that the Bailiff has two principal functions. Firstly, that of service of court processes, and secondly, the execution of court decisions and other enforceable rights.

1.1. Service of court processes

The service of court processes is the responsibility of the Bailiff. It is the medium through which court processes are communicated to the adverse party by bringing the process to his knowledge. The Bailiff has several means provided for by law to perform this function. The court process can be handed to the party concerned personally with proof of service.¹² It can be done by posting the process through the post office to the concerned. Service can also be carried out by substituted means.¹³ Once a party is handed a process by the Bailiff, we can safely say service had been effected on that party.

When it concerns the attachment of real property, service of process can be effected on the person concerned personally or left at his known place of residence. Residence is the act or fact of living in a given place for some time as opposed to domicile which requires bodily presence plus an intention to make the place one's home.¹⁴ According to the celebrated Lord Denning, M.R., residence means “*to dwell permanently or for a considerable time, to have one's*

⁶. *The Annot Lyle*, (1886), 11 PD. 144. See also Aguda, A., (1985), *AGUDA; Principles and Practice in Civil Matters in the High Courts of Nigeria*, 4th Ed. London, Sweet and Maxwell, p. 202

⁷. Bryan A., Garner (2009), *Op. cit.* p.1502.

⁸. The Sheriff and Civil Process Ordinance, CAP 189 of the Revised Laws of the Federation, in its Section 3 states that “The Inspector General of Police shall be the Sheriff for Nigeria”. This Ordinance was the law applicable in former West Cameroon before harmonization by the OHADA Laws.

⁹. Section 4 of the Sheriff and Civil Process Ordinance stated that : (1). “Each Commissioner of Police shall be a Deputy Sheriff ... and shall be responsible for the control of the other Deputy Sheriffs stationed therein.

(2). Each Deputy Commissioner of Police and each Superintendent of Police shall be *ex-officio* a Deputy Sheriff....”

Under the SCPO, the Bailiff was appointed by the Sheriff and the latter worked directly under the control and supervision of the former.

¹⁰. This Law has been modified and amended by Decree No. 85/238 of 22nd February 1985 and of recent Law No. 96/002 of 10th January 1996 on the Statute of Bailiffs.

¹¹. See Section 1 of Law No. 96/002 of 10th January 1996 on the Statute of Bailiffs which spells out their functions.

¹². For which the date to reckon with shall be that stamped on the back of the mail. But see Article 94 of the UASRPME where preliminary summons to pay may not be served on the judgment debtor at the elected residence.

¹³. This will be the case when the court so orders, for example, that the process be published in well-read news paper within the locality where the concerned resides.

¹⁴. See Bryan, A., Garner, (2009), *Op. cit.* p. 1423.

settled usual abode, to live in or at a particular place"¹⁵. Widgery, L.J., while stressing on the need for a degree of permanence, defined residence as "*the place where a man is based or where he continues to live, the place where he sleeps and shelters and has his home.*"¹⁶

1.2. Execution of court decisions and other enforceable rights

The law confers the execution of judgments in the hands of a Bailiff. By court decisions we are referring to judgment delivered by the courts of law which have become final and ready for execution, or judgments capable of immediate enforcement. Other enforceable rights refer to those instruments, though not coming from the courts, but have the status of a court judgment and once recognized by a domestic jurisdiction they become enforceable just like any other valid court judgment.¹⁷

The responsibility to make appropriate findings for the accomplishment of the mission of execution rests exclusively on the Bailiff.

The Bailiff, while enforcing a writ of execution, may initiate action before the competent court whenever he encounters any difficulty in the execution process. This is provided for in Article 48 of the UASRPME.

The Law is very precise on the mode of institution of the action by the Bailiff. This is by writ of summons. Any other mode of instituting the action shall be declared inadmissible by the court and the matter dismissed. Once the parties to the dispute are served with the writ of summons by the Bailiff, the court may proceed to hear the dispute and any ruling delivered shall be considered as after full hearing. In carrying out forceful execution, the Bailiff may mount guard at the doors of the debtor where the occupant of the house denies him ingress, or if he is absent, to ensure that attached property is not dissipated, while requesting the intervention of the administrative authorities, the police or the gendarmerie, as the case may be.¹⁸ Where the debtor is absent, the Bailiff has to make sure that the doors he used to enter the house are closed after his operation.¹⁹ The executing Bailiff may also take photographs of the property seized which photographs shall be preserved for verification of the attached property. In case the judgment debtor tampers with the property, the Bailiff will have to use the photographs as proof of the commission of the offence during dispute²⁰ before the competent court.

According to some authors, though the Bailiff is an auxiliary of justice, he also presents as a private agent whose principal function includes the recovery of civil debts.²¹ In carrying out forceful execution, the Bailiff has to consider certain factors before the execution proper. These factors are properly regulated by the law. They include items such as the time and place of execution, and goods subject to the execution process.

1.2.1. Time of execution

The law is very clear on the time that forceful execution can be carried out. This is only possible within the days and hours so prescribed by the law. Article 46 of the UASRPME spells out when forceful execution may be carried out.

By this provision of the law, forceful execution cannot be carried out on Sundays or public holidays, except in the case of necessity duly authorised by the President of the court where execution is sought. Execution cannot also be carried out before 8a.m or after 6p.m. It can only be levied only in dwelling houses. The distraining party who is the creditor, may not be present at the execution, except the is a court order from the by the competent court.

The tenets of the above cited law make it clear that execution cannot be carried out on Sundays and other recognized public holidays. The law that regulates public holidays and other Civil and Religious Feast Days is Law No. 73/05 of 7th December 1973.²²

According to Article 2 of this Law, feast days are divided into Civil Legal Feast²³ and Religious Legal Feast Days.²⁴ Forceful execution cannot be carried out by the Bailiff on any of these recognized feasts days. It cannot also be carried out on any other day decreed by the President of the Republic as public holiday.²⁵

¹⁵. *Fox v. Stirk* [1970] 3 All E.R. 7, C.A. , where it was held that students in the University of Bristol who lived in a hall of residence during term time were resident there and thus entitled to be placed on the electoral register.

¹⁶. *Ibid*, pp.13 and 477, respectively

¹⁷. See UASRPME, Article 33 for the various enforceable rights provided for by the law.

¹⁸. UASRPME, Article 42.

¹⁹. *Ibid*, Article 43.

²⁰. Disputes that arise in the course of the execution of court judgments come before a special Presidential jurisdiction. The OHADA laws announced the creation of a judge in-charge of such disputes in its Article 49 of the UASRPME, but left the latitude to member states to enact laws, giving effect to that jurisdiction. In Cameroon, Parliament had to pass Law No. 2007/01 of 14th of April 2007 instituting a Judge in-charge of litigation related to the Execution of Judgments and lay down the conditions for the Enforcement in Cameroon of Foreign Court Decisions, Public Acts and Arbitral Awards .By the provisions of Article 3 of this law, the competent court to handle such disputes is the President of the court that delivered the contested decision or a judge delegated by him.

²¹. R., Laba, (2012), *Le Contentieux de L'Exécution*, 11th ed. Lexis Nexis, Paris, p. 12.

²². This Law fixes Legal Feasts Days in the United Republic of Cameroon.

The law proscribes all acts of forceful execution on Sundays and public holidays, except authorized by the President of the court in cases of necessity.²⁶ The same law does not describe the circumstances that shall amount to necessity, permitting such execution to be carried out on prohibited days. The inference therefore, is that the concept of necessity is left to the discretionary appreciation of the President of the court. This discretion, it is submitted, should be employed judiciously.

Also, the procedure to obtain authorization of the President of the court in cases of necessity has not been stipulated by the OHADA legislator. One can therefore be tempted to say that the legislator has left the courts with a lot of discretion to be exercised.

The UASRPME also forbids any measure of enforcement before 8a.m and after 6p.m. According to F., Anoukaha et al.,²⁷ this measure is intended to protect the rights of the judgment debtor to his privacy and from abuses likely to arise during the execution process. These authors postulate that by 6 am, the judgment debtor may still be in bed and any act of execution levied during this time may surely infringe upon his privacy.

The law equally fails to address a situation where execution is commenced before 6p.m. and continues thereafter, whether such acts of execution will be regarded as null and void. In the face of this void, recourse may be had to the domestic laws of each contracting State. It is our considered opinion that execution commenced before, but which continues beyond 6p.m. will not be declared null and void.²⁸

It may be argued that by the employ of the word “*may*”, the OHADA legislator intended to vest judicial discretion to the courts to authorize forceful execution outside the prohibitive days and hours, whenever good cause is shown. It goes without saying, that the courts can properly authorise forceful execution before 6a.m. and beyond 8p.m., when the circumstances so warrant and in case of necessity. It need only be admonished that such discretion should be used judiciously.

It can safely be concluded that forceful execution is permitted on Saturdays, since the OHADA legislator has not expressly so forbidden.²⁹

It is submitted that the sales of articles seized by the Bailiff is good and regular only when seizure was carried out at the day and hour prescribed by the law.³⁰ The fact that the OHADA law has selectively stated the time when forceful execution can take place, and the days and hours when same cannot be executed, seem to go against the spirit and import of the OHADA Treaty. This argument appears plausible when one considers that the high contracting parties had affirmed in their objectives to achieve a harmonized, simple, modern and adapted business law, in order to facilitate business activities.³¹ The fact that some days are excluded from forceful execution may validly justify the argument that the provisions of the UASRPME have contributed to slow down the execution process and rather complicated business activities.

This researcher is of the opinion that excluding some days from execution may just facilitate the task of the debtor to organize his insolvency and dissimulate his assets from execution. Very few debtors can willingly comply with the

²³. Civil Legal Feast Days include; New Year day, that is, 1st January of every year, Youth day, that is, 11th February of every year, Labour Day, that is, the 1st of May of every year and National Day, the 20th May of each year.

²⁴. While Religious Legal Feast Days include Ascension Day, Holy Sunday, Assomption Day, that is, 15th August every year, Christmas Day 25th December, Ramadan Day and Feast of the ram. Under Article 6 of the same Law, certain enterprises whose services cannot be interrupted are exempted from having public holiday

²⁵. Under Article 4 of Law No. 73/05 of 7th December 1973, the eve or the next day after a legal feast day may be declared a public holiday by order of the President of the Republic where the feast is celebrated on a Friday or Tuesday, as the case may be. Similarly, when a religious feast is celebrated on a Sunday or on a public holiday, the President of the Republic may declare the next day as a public holiday, but workers may go about their usual activity.

²⁶. See UASRPME, Article 46.

²⁷. See also F., Anoukaha et al. (2003), *Les Procédures Simplifiées de Recouvrement et les Voies d'Exécution en OHADA*, 1st Ed., Yaoundé, PUA, p. 25.

²⁸. Drawing inspiration from the provisions of Section 99 of the Cameroon Criminal Procedure Code, one is inclined to hold such an opinion in the absence of any express provisions of the law to the contrary. Section 99 of the CCPC States that;

(1) “No search may be conducted on a private house and premises between 6 p.m. and 6 a.m.

(2) However, a search already begun may continue after 6 p.m. on the authorization of the State Counsel.”

²⁹. The express mention of one thing means the exclusion of all others. Hence the latin maxim “*expressio unius est exclusio alterius*.” See also Section 20 (4) of Decree No. 85/238 of 22nd February 1985 to modify certain provisions of Decree No.799/448 of 5th November 1979 on the profession of Bailiffs which provides that the Bailiff cannot carry out service of process on Sundays and public holidays and before 6a.m. and after 6p.m. on working days.

³⁰. See CCJA Arrêt no. 012/2009 du 26 Février 2009, *Affaire Société Négoce et Représentation Commerciale en Côte d'Ivoire dite NRCCI C/ Société ALPI Côte d'Ivoire dite ALPICI*, Juridata No.J012-02/2009, where the August jurisdiction held that Article 46 of the UASRPME relates to the conditions for forceful execution with precision on the days and hours within which forceful execution can be carried out and not to prejudice resulting from an irregular sale. The CCJA concluded that by declaring as good and valid the sales carried out on the 14th April 2006, the Regional Court of Appeal did not violate the relevant text and thus rejected the action of the appellant as unfounded.

³¹. See the Preamble of the Treaty of the 17th October 1993 on the Harmonisation of Business Law in Africa, as amended on the 17th October 2008.

judgment debt. Thus, it is suggested that when it comes to forceful execution, the process should not be limited to specific days.

1.2.2. Place of execution

The place of execution is where the property of the judgment debtor is located. These properties can be seized by the executing Bailiff irrespective of the place where they are found, even when it is held by a third party.³² The place of execution is very paramount when it concerns forceful execution. Article 46 (2) of the UASRPME provides *inter alia*, that "... *only in places not used as dwelling.*" The Uniform Act does not define a dwelling place. However, Bryan A. Garner states that "*A dwelling house is the house or other structure in which a person lives; a residence or abode. The house and all buildings attached to or connected with the house. A building, a part of a building, a tent, a mobile home, or another enclosed space that is used or intended for use as human habitation.*"³³

That forceful execution cannot be carried out in a dwelling house is probably due to the fact that the law protects one's dwelling place which is inviolable.³⁴ Another issue which the law does not address is whether the Court can, using the doctrine of necessity, safely authorise execution in a place used as a dwelling house by the judgment debtor. Furthermore, the judgment creditor is not permitted to take part at the seizure operations. But the same law empowers the creditor to be present at the seizure if it becomes necessary. Whether his presence is necessary or not, is a matter to be determined by the court.

This means that in the absence of any necessity, the judgment creditor who is known to possess a vested interest in the enterprise of execution, may never take part thereat. The mischief which the law intended to cure by putting away the judgment creditor from being present at the place of execution is still to be deciphered.³⁵

With respect to real property, the competent court before which the sale shall take place is the High Court.³⁶ The real property may be located in many jurisdictions. The question is, should execution be levied in all of these jurisdictions? The Uniform Act has provided the answer to this question. It is clear that where forceful execution concerns immovable property from the same business and located in many jurisdictions, attachment proceedings can be done in any of the courts where the property is located. The choice is left to the judgment creditor to decide which property is to be attached by the executing Bailiff.

Once proceedings are commenced or engaged in any of these jurisdictions, it attaches and engulfs the rest of the assets in other jurisdictions of the joint exploitation. The creditor only has to prove that the property relates to joint exploitation and belongs to the same business. It has to be established that the judgment debtor carries out same activity in the different jurisdictions where the real properties are located. The mere fact that the real properties belong to the same debtor does not *ipso facto* mean that they are related to the same activity of exploitation. Exceptionally, the judge may authorize forced sale of real property situated in the territorial jurisdiction of different courts to be carried out simultaneously. This is the case if the property forms part of one and the same business. Or, where the value of the property in the jurisdiction of one court is less than the total sum owed the judgment creditor and other registered creditors.³⁷ The reason may be to reduce costs of the procedure and seizure. It also protects both the creditor and the debtor because if the value of the entire real property does not cover the judgment debt, engaging action against each real property will only multiply the cost by each of the property being attached separately.³⁸ That the properties constitute the same business is left to the appreciation of the judge.

1.2.3 Seizure of assets

At the expiry of the eight days period of service of the preliminary summons to pay,³⁹ the Bailiff may enter into the residence of the judgment debtor to seize all the assets inclusive of those held by third parties, save the national law of

³² . UASRPME, Article 50.

³³ . Bryan, A., Garner, (2009), Op. cit. p. 586.

³⁴ . See Law No.96/06 of 18th January 1996 on the Cameroonian Constitution, as amended by Law No. 2008/001 of 14th April 2008, wherein the preamble provides that "*the home is inviolable. No search may be conducted except by virtue of a law.*"

³⁵ . The judgment creditor knows the judgment debtor and his assets more than any other judicial actor. Putting him away from the execution proper may indirectly stifle the process.

³⁶ . UASRPME, Article 248. From a reading of this Article, it is left to each State party to determine the competent jurisdiction *ratione materiae* and *ratione loci*.

³⁷ . UASRPME, Article 252.

³⁸ . Ibid, Article 251, which states that "*the creditor may only pursue the sale of real property not mortgaged to him where the real property mortgaged to him is insufficient, save where all the property constitutes one and the same business and where the debtor so requires.*"

³⁹ . See UASRPME, Article 92 which provides that "*the seizure shall be preceded by a prior summons to pay served at least eight days before the seizure to the debtor and containing, under pain of being declared void;*

(1). A mention of the writ of execution authorizing the proceedings, with a separate account of the sums claimed in principal, costs and accrued interest, as well as an indication of the interest rate;

the member state concerned expressly declares that these assets are not subject to forceful execution. Once he enters the premises of the debtor, he has to ascertain the state of the goods found therein, their value and takes stock if such goods can be made the subject of seizure operations. Seizure may also be carried out on conditional claims, future debts and conditional debts.⁴⁰

Also, the Bailiff may seize all the tangible personalities belonging to the debtor and place them for sale, notwithstanding that such property was previously seized as a preventive measure.⁴¹ In the absence of the owner of the premises or where ingress is refused the Bailiff, he may place guard at the door of the premises to avoid dissipation of property. And thereafter, solicit the intervention of the forces of law and order or the administrative authorities.⁴² The State is bound to lend support to the execution process.

1.2.4. Goods not subject to seizure

The UASRPME is silent on assets that are not seizable by the Bailiff during the process of execution. The Act refers us to the domestic laws of each contracting party. Article 51 of the UASRPME states that “*inalienable property and rights shall be defined by each of the contracting states*. It is therefore left to the member states to legislate defining goods which are inalienable from those than can be seized. In the case of Cameroon, there seem to be no legislation on this subject after the coming into force of the OHADA Laws. A look at the domestic laws reveal that in the Anglophone Regions of Cameroon, the law that regulated the enforcement of court judgments before the advent of OHADA Uniform Act was the Sheriff and Civil Process Ordinance. This Ordinance provided that;

Every Sheriff or officer executing any writ of execution issued from a court against the goods or chattels of any person may by virtue thereof seize;

a). any of the goods and chattels of that person, except the wearing apparels and bedding of that person or his family and the tools and implements of his trade, to the value of five pounds, which shall to that extent be protected from seizure;

*b). any money, bank notes, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to that person.*⁴³

Normally, assets which are immune from seizure are those necessary for the personal life of the judgment debtor and his family and also implements of his trade. These are assets which appear indispensable to the survival of the debtor and his family. Objects used to perform his professional activity cannot be seized.

In the French speaking Regions of Cameroon, the instrument that governed enforcement of judgment before the coming into force of the OHADA Law was the Code of Civil and Commercial Procedure (CCCP).⁴⁴ The Code outlines a list of items that cannot be subject to seizure.⁴⁵ Furthermore, objects such as the beddings of the debtor, those of his children living with him, clothes, items belonging to his wife, if they don't have joint property cannot be seized. The Cameroonian legislator had the desire to preserve the source of revenue of the debtor by providing that money relating to the profession of the debtor up to the sum of 20.000francs should not be alienable. Machines and instruments used for practical training or scientific and artistic exercises, military equipment, craft tools necessary for his personal occupation, foodstuff for consumption by the debtor and his family for up to one month, as well as utensils necessary for preparing food shall not also be made the subject of seizure operations. Also, domestic animals and feed for these animals during one month cannot be seized.⁴⁶

1.3. Effects of seizure of assets

Where tangible property is seized consequent to execution proceedings, such property shall be left with the debtor who takes custody of the items seized. This is the same situation where the distraint property is in the hands of a third party.⁴⁷ The act of seizure whether the property is in the hands of the judgment debtor or a third party, produces legal consequences. These legal consequences range from inalienability of the property seized to interruption of the period of prescription.

(2).A summons to settle the debt within a period of eight days, failing which he may be compelled to pay through the forced sale of his personal property.” See also Article 98 of the UASRPME.

⁴⁰. Ibid, Article 50.

⁴¹. Ibid, Article 95.

⁴². Ibid, Article 42.

⁴³. See Section 25 Sheriff and Civil Process Ordinance, Cap 189 of the Revised Laws of the Federation of Nigeria.

⁴⁴. This Code is known in French as *Code de Procédure Civile et Commerciale* of the 16th December 1954.

⁴⁵. Article 315 of the *Code de Procédure Civile et Commerciale* lists the following items as inalienable; goods declared inalienable by the law, foodstuff, sums of money and objects declared inalienable by the testator or donors. See also Article 316 of the same Code.

⁴⁶. CCCP, Article 327.

⁴⁷. UASRPME, Article 36.

1.3.1. The goods become inalienable

The first effect that goes along with seizure operations carried out by the executing Bailiff is that, the assets are deemed to have been placed in the hands of the law. Once property is seized during execution, the act of seizure renders the assets inalienable in the hands of the depository. The term inalienable means the assets are no longer “transferable or assignable”.⁴⁸ This means that these assets are not capable of being removed. The assets of the debtor which apply to the seizure are frozen. They cannot be sold or disposed of in any manner. In most cases, these are movable assets which may be tangible or intangible.⁴⁹ Once seizure of assets has taken place, the debtor cannot displace, remove, conceal or transfer such property. If he does, this will amount to a criminal offence of misappropriation of attached property.⁵⁰ The intention is to prevent the debtor or its depository from dissimulating the property. Where the property generates revenue, same shall be preserved and sold to pay the judgment debt.

1.3.2. Interruption of prescription period

The notification of the act of seizure on the debtor, even in respect of sequestration, shall automatically interrupt the period of prescription of action.⁵¹ Interruption of prescription period is an incident that retroactively reduces the time already past. This means that time starts running afresh from the day of notification of the seizure. Other items that interrupt prescription and set time to start running anew include acknowledgment of the rights of the creditor by the debtor.

1.4. The responsibility of the Bailiff

In the exercise of his duties, the Bailiff is directly under the control and supervision of the State Counsel.⁵² In so doing, he may commit a professional fault or insufficiency that may lead to disciplinary measures and even the payment of damages. Disciplinary measures against the Bailiff are taken by the competent Procureur General of the Court of Appeal and the Minister in-charge of Justice. What constitutes a professional fault of the Bailiff has been listed by the law to include; professional mistakes, breach of honour, impropriety, non respect of the authorities or breach of dignity.

After reminding the debtor to present a report or indicate property which has been the subject of any previous seizure, the executing Bailiff has as an obligation to draw up a report of his seizure which must necessarily contain certain specificities,⁵³ failure which the seizure shall be declared null and void by the court. Where the Bailiff fails to do this precision in his seizure report and such is declared null and void, it may attract his personal responsibility for professional insufficiency. That is why each Bailiff upon assuming office, is required to enter into a policy of insurance to ensure their professional liability and also pay a fixed amount as security. This amount shall not be less than two hundred thousand (200.000) francs and not more than five hundred thousand (500.000) francs.⁵⁴

Bailiffs are not only liable to disciplinary measures. They are also liable to dismissal and damages. This will be the case if they violate the provisions of Section 42 of the Law organizing their profession. The infliction of disciplinary measures and dismissal is left to the appreciation of the Minister of Justice on the recommendations of the Procureur General. While the payment of damages will be left to the sovereign appraisal of the courts. Some of the misconduct that may attract disciplinary measures against the Bailiff is where the Bailiff constitutes himself either directly or indirectly, as bidder for articles they are charged to sell by auction. Articles intended for auction sale shall not be acquired by the spouse, ascendants, collaterals, uncles, aunts or even in-laws of the Bailiff.⁵⁵ Also, a Bailiff shall not keep in his possession for more than one month sums of money collected on behalf of his client.

2. The Notary Public

Decree No. 95/034 of 24th February 1995 is the text that regulates the profession of Notaries in Cameroon. By this instrument, a Notary is defined as a public officer charged with receiving all acts and contracts for which the parties desire to authenticate the acts of public authority, in order to ensure the date, preserve and safe custody and gives out copies thereof.⁵⁶ By this definition which at the same time stipulates his attributions, it is clear that the Notary is not directly concerned with forceful execution of judgments especially when it concerns movables. However, the Notary is

⁴⁸. Bryan A., Garner (2009), Op. cit. p.827.

⁴⁹. See also UASRPME, Article 56.

⁵⁰. Punishable under the Section 190 of the Cameroon Penal Code with a sentence from (1) one to 5 (five) years imprisonment and with a fine of from CFAF 50.000 (fifty thousand) to 1.000.000 (one million).

⁵¹. See UASRPME, Article 37.

⁵². Section 40 (1) Law No. 85/238 of 22nd February 1985 to amend certain provisions of the Decree No. 79/448 of 5th November 1979 to regulate the Duties and lay down the Rules and Regulations of the Profession of Bailiffs in Cameroon.

⁵³. See UASRPME, Article 64 (1), (2), (3), (4), (5), (6), (7), (8), (9) and (10) which specify the list of requirements that must be mentioned in the Bailiff's seizure report. See also Article 69 of same.

⁵⁴. Section 18 of Law No. 85/238 of 22nd February 1985 to amend certain provisions of the Decree No. 79/448 of 5th November 1979 to regulate the Duties and lay down the Rules and Regulations of the Profession of Bailiffs in Cameroon.

⁵⁵. Ibid, Section 42 as read with Section 43.

⁵⁶. See Article 2 of Law No. 95/034 of 24th February 1995 on the Profession of Notaries in Cameroon.

largely involved in the execution of immovable property. The implication of Notaries in the execution process of immovable property is an innovation brought in by the OHADA Laws. The UASRPME makes provision for the sale of landed property to take place in front of the court premises or the office of a Notary.⁵⁷ Associating the Notary in matters of execution has raised a lot of worries, which the law maker has not provided the solutions. Firstly, the mode of seising the Notary has not been specified by the law. Secondly, the relationship between the Notary and the competent court is imprecise. This notwithstanding, what is clear is that for a Notary to intervene in the execution process, there must be an agreement or contract between the parties and the said Notary.⁵⁸

2.1. Existence of a prior contract

A Notary cannot intervene automatically in the sale of real property without the consent of the parties. It is the parties to the execution process that requisition the intervention of the Notary for the sale by public auction. By the parties, we are referring to the judgment creditor, the judgment debtor or other registered creditors. The Uniform Act does not spell out whether there is a particular form by which the matter shall be brought to the Notary by the parties. However, it is submitted that there must be an existing contract between the Notary and the parties evidenced in writing to ensure guarantee of the contractual terms.

The contractual agreement should decide on the choice of the Notary within the jurisdiction of the competent court, as well as on the person of the Notary. Where the creditor and debtor do not agree on the choice of the Notary for the purpose of the auction sale, the sale shall take place before the High court, which is the organ with full jurisdiction in matters of attachment of immovable property. According to F., Mbono,⁵⁹ the intervention of the Notary in matters of execution against immovable property appears as derogation to the rules of ordinary law, which derogation is only valid if all the parties give their consent. The role of a Notary in the attachment of immovable property will depend on the time he intervenes in the execution process. The Notary intervenes during the process of adjudication. The OHADA legislator has made precision on the role of the Notary which essentially includes; the organization and sale of the property, drawing up of report mentioned in the specifications and delivery of copy thereof to the higher bidder after payment of the cost of the proceedings and the sales price of the landed property.⁶⁰

If any disputes arises during the auction sale, the Notary shall without delay transmit the case file to the competent High Court for adjudication.

Most often, the choice of the Notary is done by the judgment creditor. Other creditors to the action simply adhere to this choice.

The Uniform Act does not state the relationship between the Notary and the competent High Court in attachment of real property. The practices of the court will surely define the limits of the powers of the Notary from those of the court.

3. The Lawyer

Law No. 90/059 of 19th December 1990 regulates the profession of Advocates in Cameroon. Under this instrument, the duties of a Lawyer include, *inter alia*, the institution of legal proceedings and ensuring the execution of court judgments.⁶¹

A Lawyer is a professional person licensed to practice law in the law court. He is otherwise called an Advocate. The Lawyer performs both the functions of a Barrister and a Solicitor in Anglophone Cameroon.⁶²

The Lawyer plays a major role in the process of execution particularly when it concerns attachment of immovable property. Where there is expected to be sale of immovable property, the Lawyer has the responsibility to draw up specifications for the sale. His role is indispensable because when drawn up by an authority other than the Lawyer for the creditor, such specification will *ipso facto* be declared null and void.

The auction sale of immovable property is conducted before the competent court or in the office of the Notary.⁶³ Respective bidders may be represented at the auction sale by their Lawyers.⁶⁴ His functions as Counsel for either party in dispute gives the Lawyer the opportunity to intervene in the execution of court decisions. The Lawyer advises the

⁵⁷. See UASRPME, Article 282.

⁵⁸. See the Code of Civil and Commercial Procedure applicable in Francophone Cameroon, Article 413.

⁵⁹. F., Mbono, (2019), *La Pratique de la Saisie Immobilières*, Paper presented at a Seminar organised under the theme "Le Contentieux des Actes Uniformes OHADA et des Instruments de Paiement en Zone CEMAC", by the Ministry of Justice, Yaounde, p. 19.

⁶⁰. UASRPME, Article 290.

⁶¹. See Section 1(2) of Law No. 90/059 of the 19th of December 1990 to Organise Practice at the Bar in Cameroon.

⁶². Section 74 of Law No. 90/059 of 19th December 1990, to Organise Practice at the Bar in Cameroon is to the effect that Advocates established in the South West and North Provinces may, as a transitional measure, perform the duties of Notary Public.

⁶³. Since Lawyers in Anglophone Cameroon also perform the duties of a Notary Public, the sale can validly take place at the approved Chambers of the Lawyer, acting in his capacity as a Notary Public.

⁶⁴. See UASRPME, Article 282.

creditor on the appropriate means and methods of execution to engage and may seize the competent court for some conservatory measures. As Counsel for the debtor, the Lawyer will have to ensure the strict observance of the rules relating to forceful execution and denounce any excesses that more be noticed.

Where the execution proceedings require the institution of an action before the court, the Lawyer takes the lead, defending his client, to ensure that the appropriate action is filed before the competent court.

4. The Legal Department

The Legal Department is an arm of the institution of justice that is charged with the investigation of offences, institution of matters in court and carrying out of prosecution. It may issue any warrant necessary for the commencement and prosecution of criminal matters in court. It also ensures the enforcement of laws, regulations and judgments. In this regard, it may make any submissions it considers necessary before any court in the interest of the law.⁶⁵

To any court, there is attached a Legal Department.⁶⁶ The Legal Department is composed of Magistrates at the Legal Department of the Supreme Court, the Court of Appeal, the High Court and the Court of First Instance.⁶⁷ At the level of the Supreme Court, we have the Procureur General of that court and all Magistrates serving under him that make up the Legal Department of the court. At the Court of Appeal, the Legal Department is headed by the Procureur General of the Court of Appeal. Together with all other Magistrates serving under him, they constitute the Legal Department of that Regional Court. At the level of the High Court and Court of First Instance, the Legal Department is made up of the State Counsel and all other Magistrates serving under the direct control of the State Counsel.⁶⁸

The Legal Department is indivisible, homogenous and hierarchically structured such that any judicial act done by one Magistrate of the Legal Department is presumed to have been done in the name of the entire Department.⁶⁹ The Legal Department is a principal party in all criminal matters. Section 128 (1) of the Criminal Procedure Code states that *“The Legal Department shall be a principal party in a criminal trial before the court and shall be represented at such trials under pain of rendering the entire proceedings and proceedings null and void.”*

Generally, the State Counsel ensures the enforcement of all judgments and all other enforceable instruments. In the exercise of his duties, he has the right to directly request the intervention of the forces of law and order or any person likely to help in the discovery of the truth.⁷⁰ Once requested by the State Counsel, the Judicial Police Officer cannot refuse to assist in the execution process.

The execution of court decisions does not only involve the interest of the judgment creditor and that of the judgment debtor. It is also important that during execution public order is considered such that the execution process does not jeopardize or infringe against fundamental human rights. Therefore, the Legal Department has the responsibility not only to ensure that the law is properly applied, but also to investigate and prosecute offences resulting from the execution of enforceable instruments, make sure that public order is not disrupted and ensure general control of the execution process. Because of the important role played by the Legal Department in the execution process, it is most often solicited during execution.⁷¹

However, despite the important role played by the Legal Department in the execution of court judgments as required by local legislation of some member states of the supranational body, the CCJA has held that all provisions of the law which provide for compulsory transmission of the execution documents⁷² to the Legal Department for their submissions are contrary to the spirit and letter of OHADA.⁷³ This stance presumably, is to ensure celerity in the execution process. This position taken by the CCJA can be extended to the Cameroonian local legislation which provides that whenever the Court of Appeal is seised with an application for stay of provisional execution, the Legal Department shall be bound to produce their submissions within five days before the hearing, failing which they shall be precluded.⁷⁴

⁶⁵. See Section 29 of Law No. 2011/027 of 14th December 2011 to amend and supplement Law No. 2006/015 of 29th December 2006 on Judicial Organisation of Cameroon.

⁶⁶. Law No. 2006/015 of 29th December 2006 on Judicial Organisation of Cameroon, as amended, Sections 15, 17 and 20, for the Legal Departments of the Courts of First Instance, High Courts and the Courts of Appeal, respectively.

⁶⁷. See CCPC, Section 127.

⁶⁸. Ibid, CCPC, Section 127(3) (4) (5) and (6).

⁶⁹. For more on the functions of the State Counsel, see Sections 135 to 141 of the CCPC.

⁷⁰. See Ibid, Section 138(1) and (2).

⁷¹. UASRPME, Article 29 (2).

⁷². See the provisions of Article 36 of the *“Code de Procédure Civile et Commerciale”* applicable in French speaking Cameroon which makes provision for civil matters to be communicated to the Legal Department.

⁷³. See CCJA Arrêt No. 003/2002 of 10th January 2000, *SIEM c/ Société ATOU et BICICI*. See also Arrêt No. 016 of 29th April 2004, *SDA et Wahad Nuhada c/ Hassan Sahly*.

⁷⁴. Article 4 (4) of Law No. 92/008 of 14th August 1992, on the Enforcement of Court Judgments in Cameroon..

With respect to criminal matters, the OHADA Treaty makes provision for criminal offences to be determined by States Parties with corresponding sanctions.⁷⁵ The OHADA legislator has initiated certain criminal offences that violate the Uniform Acts.⁷⁶ Though it has been remarkably noted that it is rare to find a Legal Department in any OHADA members state prosecute any of the offences provided for in the Uniform Acts.⁷⁷ According to S. C., Ekani, the near total absence of the prosecution of these offences provided for in the OHADA Uniform Acts stems from the subordination of the Legal Department to the executive which does not allow or give it a free hand to engage criminal prosecution for these offences.⁷⁸

H., Tchanchou had observed that the non inclusion of the Legal Department in the proper application of the OHADA Laws relating to execution is because of their ignorance of this law and the corrupt practices that have bedevilled this corps.⁷⁹

However, OHADA member states have enacted local legislation to incriminate and reprimand criminal conduct resulting from execution. The judgment debtor against whom forceful execution is carried out may be minded to commit offences such as organized insolvency,⁸⁰ misappropriation or destruction of attached property,⁸¹ or even assault⁸² on the Bailiff charged with execution.

It is not only the judgment debtor who is likely to commit offences during the execution process. The Bailiff and Process Servers may also commit offences. Irrespective of the offender, when an offence is committed during the process of forceful execution, the State Counsel must take all steps necessary to investigate offenders, with a view to seising the competent court for trial.

The State Counsel also controls the operations of all the Bailiffs during forceful execution to ensure that they comply with the dictates of the law. The executory formula expressly mentions the role of the State Counsel in the execution of court decisions when it states that “*all State Counsel to lend them support... .*”⁸³

5. The State

The procedure of forceful execution requires the act of constraining the debtor to comply with the judgment debt as contained in the enforceable right. Forceful execution is an expression of the public force that cannot be accomplished without the assistance of the State.⁸⁴ The UASRPME behoves the State to lend assistance in the execution of court decisions and commits the State’s liability in the event of failure to assist the process.⁸⁵

The same Act talks of liability of the State when she fails to lend assistance to the execution process, but the manner and procedure to invoke this liability has not been stated by the law. While relying on the domestic laws of each State party, the situation is further compounded when we consider that the same OHADA law accords the State absolute immunity from execution.⁸⁶ From the tenor of the Article 29 of the UASRPME, the assistance of the State to the execution process is not facultative. It is imperative by the use of the phrase “*shall be required*”. The State intervenes in forceful execution via its administrative and legal authorities. These State actors cannot intervene simply to impede or delay the execution process, otherwise, the State will be held liable. The Police and Gendarmerie can only intervene if there is resistance on the part of the debtor, or where the execution is likely to jeopardize public security and for the protection of the persons carrying out the seizure.⁸⁷

In practice, it is very recurrent for the Legal Department to intervene in the execution process by stopping the Bailiff from continuing, or refusal by the Department to instruct the Police and Gendarmes to assist the Bailiff in the execution process, where the Bailiff is faced with a recalcitrant debtor. This negative intervention by the Legal Department most often is without legal justification.

⁷⁵ OHADA Treaty, Article 5.

⁷⁶ Law No. 2003/008 of 10th July 2003 relating to Penalties for Offences provided for in certain Uniform Acts of the Organisation for the Harmonisation of Business Law in Africa (OHADA).

⁷⁷ See T., Tchouambia Tomtom, (2014), *La poursuite des infractions pénale OHADA devant les juridictions d’instances Camerounaises: Où est passé le ministère public?* Revue de L’ERSUMA, Numéro 4, p.34.

⁷⁸ S.C., Ekani, (2015), *Liberté de Saisir et Exécution Forcée dans l’espace OHADA*, 1st ED., L’Harmattan, Paris, pp. 307-308.

⁷⁹ H., Tchanchou, (2012), *La place du parquet ou Ministère Public dans les processus judiciaires Communautaires: le cas de l’OHADA*, Revue de l’ERSUMA, Numero 1, Juin 2012, pp. 489-497.

⁸⁰ See Cameroon Penal Code, Section 181 that punishes the offence of willful insolvency with an imprisonment term of between one and five years.

⁸¹ See Cameroon Penal Code, Section 190.

⁸² Ibid, Sections 280, 281 and 279 which punish the offences of simple harm, slight harm and assault occasioning grievous harm, respectively.

⁸³ See Section 11 of Law No. 2011/027 of 14th December 2011 to amend and supplement Law No. 2005/015 of 29th December 2006 on Judicial Organisation

⁸⁴ J., Djogbenou, (2011), *L’Exécution Forcée en Droit OHADA*, CRE DIJ, Cotonou, Benin. p. 31.

⁸⁵ UASRPME, Article 29.

⁸⁶ Ibid, Article 30.

⁸⁷ S.C., Ekani, (2015), op. cit. p. 316.

According to the UASRPME,⁸⁸ any default or refusal by the State to lend assistance to the execution process shall commit its liability. Two issues need to be addressed here. Firstly, it is not clear when a State will be said to have defaulted. Secondly, the law is silent on the procedure to invoke the State's liability whenever such default or refusal is patent. With respect to the first concern, we opine that it can only be left to the sovereign appreciation of the judge, sitting in his *imperium* to decide whether or not the State can be held to be in default in the circumstances of the case under consideration. While the procedure to invoke the State's liability can only be traced in the domestic laws of each contracting OHADA member state.

It should be noted that the responsibility of the State can equally be invoked even where the State abstains from intervening as well as in respect of positive acts which adversely affect the rights of the judgment creditor during forceful execution. The intervention of the State in the execution process has been looked upon by some academic writers as a means employed by African States to protect their political and economic interest.⁸⁹

The question that has been raised is whether the State through its administrative and judicial authorities can lend assistance to the execution process even where public order will be disrupted. The answer will however be in the negative, when we consider that public order and the general interest over ride individual interests and all other considerations. While lending assistance to the execution process, the State must reconcile the general interest with the interest of the judgment creditor. The State will generally lend its assistance when this measure will not jeopardize public order. Under such circumstances, the executing Bailiff is accompanied by the forces of law and order. This may be the case where there is resistance on the part of the judgment debtor, or where the debtor locks the doors of his house to prevent the Bailiff from having ingress therein.

When the Bailiff meets with resistance accompanied by violence, or serious threats of violence in the course of executing a court judgment, he shall draw up a report and forward same to the State Counsel,⁹⁰ while requisitioning the authorities cited in the executory formula for their intervention.⁹¹

Where the State fails to lend assistance to the execution process, and the judgment creditor suffers prejudice as a consequence, he can validly institute an action before the competent court for redress⁹². The legal problem is that of determining the competent jurisdiction to try the State in case of failure to intervene in the execution process.

It has been opined that in case of neglect by the State, the creditor may institute action before the national courts for denial of justice.⁹³ On the issue of whether the CCJA can entertain such matters between a potential creditor opposing the State, A.D., Wandji Kanga⁹⁴ asserts that the verification of the quality of execution and the sanctions to be meted out to a State that refuses to lend assistance do not come within the competence of the CCJA.

It is our humble opinion that the OHADA draftsman should come out unequivocally to outline instances that shall warrant the State to be held liable to a judgment debtor. In this way, even the State itself will take more precaution when solicited to lend assistance to execution and the legal environment shall be clear of uncertainty. It is clear that as per the present OHADA legislation, the State is not amenable before the CCJA when it fails to lend assistance to execution. The OHADA Law having given State parties the responsibility to intervene in the execution process, we recommend that the jurisdiction of the CCJA be extended to cover such matters in order to enable creditors (victims) to seise the CCJA when the State causes loss to a creditor by action or inaction.⁹⁵

6. The Forces of Law and Order

The law empowers the Bailiff to be assisted by judicial Police Officers in the exercise of their functions. This is through the authorization of the State Counsel.⁹⁶

⁸⁸. UASRPME, Article 29(3).

⁸⁹. J., Njogbenou, (2011), Op. cit. p.44.

⁹⁰. See Section 3 (4) (New) of Law no. 85/238 of the 22nd day of February 1985 to amend Decree No. 79/448 of 5th November 1979 on the Profession of Bailiffs in Cameroon.

⁹¹. "The Procureur General, all State Counsel, all Officers of the Armed Forces and Police Force". See Section 11 of Law No. 2006/015 of December 2006 on Judicial Organisation of Cameroon, as amended.

⁹². See Law No. 2006/022 of the 29th of December 2006 to lay down the Organisation of functioning of the Administrative Courts in Cameroon. Section 3(b) of this law empowers the Administrative Court to entertain "*claims for damages for loss caused by administrative act.*" With the coming into force of this law, the Regional Administrative Courts can entertain such claims.

⁹³. S.C., Ekani, (2015), op.cit. pp. 317-318.

⁹⁴. A.D., Wandji Kanga (2009), *Le droit à l'exécution forcée, Réflexion à partir des systèmes Camerounais et Français, Thèse de Doctorat Phd., Université de Yaoundé et Université de Limoges.*

⁹⁵. Under the Cameroonian legal dispensation, such matters can be handed by the competent Administrative Court.

⁹⁶. Section 2 (1) (New) of Law No. 85/238 of the 22nd day of February 1985 to amend Decree no. 79/448 of 5th November 1979 on the Profession of Bailiffs in Cameroon.

Again, the intervention of the forces of law and order may only be possible where the enforceable title is covered with an executory clause.⁹⁷ Therefore, in order for the forces of law and order to intervene in the execution process, the sole condition necessary is that, there should be an executory formula appended to the judgment due for execution.

7. Third Parties

Third parties are persons who are not directly affected by the execution process. These are people who are not privy to any contract entered into by the parties that may give rise to forceful execution. Neither are they stated as parties in the judgment to be executed. Black's Law Dictionary defines a third party as "*a person who is not a party to a lawsuit, agreement, or other transaction but who is somehow implicated in it; someone other than the principal parties.*"⁹⁸

Generally speaking, the law enjoins third parties not to obstruct execution proceedings but to lend their support when necessary. Failure by them to fulfil these obligations may make them liable to pay damages.⁹⁹

The law distinguishes two types of third parties. Those that are purely *peintus extranei* and have nothing to do with relationship of creditor and debtor, and third parties holder of the property seized. The provisions of the above Article appear mandatory by the employ of the term "*shall*". This means that at all times, third parties are expected to lend assistance to forceful execution of court judgments. In fact, this is an obligation imposed on them by the law that must be carried out. An obligation is something compelling and not facultative, the breach of which should naturally give rise to redress, without more. Curiously, the OHADA draftsman in the proviso to this Article stated that "*Failure by them to fulfil this obligation may make them liable to pay damages*". One would have expected the OHADA legislator to use the mandatory "*shall*" in place of the facultative "*may*", given that this obligation is imposed by the law.

In furtherance of the assistance by third parties to the protection of claims, a creditor with a judgment that is due for immediate payment is empowered by law to seize from the third party any sum of money due to the judgment debtor through the procedure of third party or garnishee proceedings.¹⁰⁰ When this is the case, the garnishee or third party is expected to cooperate in the proceedings by declaring to the judgment creditor the amount owed the judgment debtor. These include any previous debts or seizures including documents which shall be communicated to the creditor by the third party.¹⁰¹

The third party has a maximum of five days to make these declarations to the executing Bailiff if same were not done on the spot at the time of service of the instrument of seizure. The third party who communicates inaccurate and incomplete declarations to the Bailiff or where the communication was done after the expiry of five days, shall be liable to pay for the object of the seizure, without prejudice to damages as may be ordered by the court. Therefore, the law recognises the role of third parties in the execution process, even when not directly related to the claim of the creditor.

8. The Registrar

A Registrars of the court work under the control and authority of the Registrar in-Chief who is the administrator of the Registry of the court. The latter, while exercising his duties, is under the authority of the head of the jurisdiction, who is the President of the Court.¹⁰² The Registrar in-Chief performs jurisdictional, administrative and accounting functions relating to the Registry which he heads.¹⁰³ He is assisted by Section Heads of the Registry who work under his supervision. The Registry of the court is the entry and exit route to justice. The Registrar plays a very indispensable role in the execution process. When it concerns the attachment of earnings, the Registrar of the court is a major actor. His role is visible in the attempts at conciliation as well as in the attachment of earnings propter.

Attachment of earnings is a procedure whereby any creditor who holds a final judgment over debt due for immediate payment may take steps to attach earnings due payment by an employer to his debtor. It suffices that two conditions are met. Firstly, the debt is due for immediate payment, and secondly, the creditor must be armed with a writ of execution.¹⁰⁴

The proceedings are mandatorily preceded by an attempt at conciliation whereby the creditor files an application to the competent court of residence of the debtor. The application should mention the full name and address of the debtor, that of the employer or its legal form, name and registered office if it is a corporate body, the amount of money owed by the debtor in principal, costs, accrued interest and the interest rate, existence of any preferential rights, if any, and indication of the method of payment of the attached sum.¹⁰⁵ Also, a copy of the judgment that gave rise to the

⁹⁷ . UASRPME, Article 29 (2) states that "The executory clause shall entail a direct requisition of the police force."

⁹⁸ . Bryan, A., Garner, (2009), Op. cit. p. 1617.

⁹⁹ . UASRPME, 38.

¹⁰⁰ .Ibid, Article 153.

¹⁰¹ . UASRPME, Article 156.

¹⁰² . Section 8 of Law No. 2011/020 of the 4th of February 2011 on the Rules and Regulations Governing the Court Registry Civil Servants.

¹⁰³ . Ibid, Section 10.

¹⁰⁴ . UASRPME, Article 173.

¹⁰⁵ . Ibid, Article 179.

attachment shall be included in the application. Registrar shall take steps to notify the creditor of the time and date of the conciliation attempt through registered letter with acknowledgment of receipt. Similarly, the Registrar shall invite the debtor within fifteen days before hearing of the conciliation attempt by registered letter. The letter shall mention certain requirements.¹⁰⁶

When the parties appear before the court at the scheduled date of hearing, the Registrar shall draw up a report of appearance of the parties at the court session. If only one party appears, the Registrar shall draw up the report accordingly, whether or not there is conciliation. Where the conciliation succeeds, the Registrar shall record the conditions of the settlement in the report and the proceedings shall come to an end.

In the event the conciliation fails, this shall be reflected in the report drawn up by the Registrar. The earnings of the debtor shall then be attached after verification by the President of the court. Any objection raised by the debtor shall be examined and ruling delivered by the court.¹⁰⁷

The Registrar- in-Chief is expected to keep a register in which shall be recorded all writs, decisions relating to transfer and attachment of earnings from work. This register is numbered and initialled by the President of the court.¹⁰⁸

It is the responsibility of the Registrar to notify the writ of attachment to the debtor's employer by registered letter or any other means with written proof. It is the Registrar who receives information from the employer on any changes in his relations with the debtor that may influence the progress of the matter.

The employer of the debtor who is the garnishee, shall make at the Registry of the court, monthly payments of sums deducted from the remuneration of the debtor without exceeding the amount attached. These payments are made to the Registrar who shall issue valid discharge thereof through receipts.

In the event of any default by the employer in making payments, the court shall deliver a ruling holding the employer personally indebted to the creditor. The responsibility lies on the Registrar to ensure that this ruling is served on the employer within three days from the date it was delivered, as well as the debtor and the creditor.

Any ruling relating to attachment of earnings which is not opposed within fifteen days shall become final and ready for enforcement. Any diligent party can obtain a copy from the Registrar of the court who appends the executor formula.¹⁰⁹

When it comes to the payment of attached funds, all movement of funds are recorded by the Registrar in a special register.¹¹⁰

Where there is only one distraining creditor, the Registrar shall pay to him or his representative, the amount received from the employer and make a mention in the special register kept for this purpose. Where there are many distraining creditors, the Registrar is expected to open an account with the bank, a postal establishment or the public treasury where sums of money shall be deposited by the employer. Upon the authorization of the President of the court, the Registrar shall withdraw money from this account which shall be distributed quarterly to the various creditors by the President of the court beginning from the first week of the months of February.¹¹¹ The President draws up a report indicating the distribution of the various amounts to the creditors.

After the report of the President of the Court, the Registrar notifies the distribution to each creditor and pays him the amount he is due against a valid discharge reflected in the register kept for this purpose.

Conclusion

It is borne out from the above exposition that the execution process requires the assistance and interventions of many stake holders, if justice has to be seen to be done. It cannot be left in the hands of a single authority. The judgment of the court will become a dead letter if not rendered operational for the judgment creditor to be able to reap the fruits of his judgment. For this to succeed, the State, the administrative authorities, the State Counsel, the Bailiff, the Lawyer, the forces of Law and Order each has a very crucial role to play. For the ends of justice to be better served within the OHADA member states, these stakeholders are constrained to work in close synergy.

It remains to be said that the State is enjoined by law to lend assistance to execution, failing which it shall be held liable. The circumstances under which the State's liability can be invoked are not stated by the law. The State appears all powerful. This is further compounded by the principle of absolute immunity accorded to her alongside public

¹⁰⁶ . Ibid, Article.

¹⁰⁷ . UASRPME, Article 182.

¹⁰⁸ . Ibid, Article 176.

¹⁰⁹ . Ibid, 189.

¹¹⁰ . UASRPME, Article 194.

¹¹¹ . Ibid, Article 198.

corporations by Article 30 of the UASRPME.¹¹² It is recommended that the OHADA draftsman should come out unequivocally to spell out the circumstances under which the State's liability can be invoked. In this way, legal certainty shall be assured. Furthermore, the present OHADA jurisdictional dispensation does not make the State amenable before the CCJA. Since the OHADA law has expressly solicited State intervention in the execution process, it is suggested that the jurisdiction of the CCJA be extended to cover this area of the law.

The State has aircrafts, vessels, trains that operate on commercial basis. The State enters into purely private contracts with natural persons, for example, the construction of roads. But when there is a judgment against her, she relies on immunity proclaimed by the law.

It will commendable and to assuage the tribulations of private companies if Article 30 of the UASRPME is revised to limit the immunities enjoyed by the Sate to purely administrative and public acts. Such that if a State fails to assist in the execution of a judgment and the creditor suffers damage, the State should not be heard to hide behind immunity from execution. In this way, the executory play ground shall be made level for all the actors.

¹¹². Albeit, recent jurisprudence of the CCJA has tended to reject this concept of absolute immunity from execution when it concerns purely commercial transactions.