

LAW ENFORCEMENT AGENTS AND DEBT RECOVERY IN NIGERIA: SOCIO-LEGAL CONSIDERATIONS.

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Abstract

This article focuses on the continuing involvement of law enforcement agents in the process of debt recovery in Nigeria. This is against the backdrop that often times, creditors resort to non-conventional methods of debt recovery through the use of law enforcement agents to harass, intimidate, assault, arrest, detain and cajole debtors to pay the debt. This article considers the reasons many creditors resort to such unconventional means in the recovery of debt. The judicial condemnation that has trailed the use of self-help in Nigeria and the existing legal frameworks for the recoveries of debts in Nigeria were also considered. Arising from the above, the conventional procedure for debt recovery in Nigeria was considered. The article also considered the implication of the use of law enforcement agents to recover debts vis a vis existing laws and fundamental rights of debtors in Nigeria. The paper concludes that debt is a civil wrong which requires lawful means and approach for its recovery, and recommended that adherence to legal means of debt recovery will greatly reduce incidence of abuse of powers by Law Enforcement Agents.

Keywords: Law Enforcement, Agents, Debt, Recovery, Creditors, Debtors.

1.0 Introduction

In the context of this article, the nexus or connecting rod between the concepts of “law enforcement agents”¹ and “recovery” is debt. Consequently, we considered it desirable to kick-starting this article with an x-ray of the concept of debt and how debt liabilities may be incurred. Debt may be seen simply as, what somebody owes another person. While Bryan A. Garner² described debt as;

¹ Law enforcement agents are the agents of the State employed in the various government agencies or parastatals charged with the responsibility of securing life and property through the enforcement or implementation of the laws, rules and regulations made by the government. Many of the agencies have particular uniform or uniforms for their personnel hence they are occasionally called uniform agencies. In Nigeria, they include the: Nigeria Police Force, Nigeria Security and Civil Defence Corps, Customs Service, Correctional Service, Department of State Service, Economic and Financial Crimes Commission, Nigerian Army, Nigerian Navy, Nigerian Airforce, etc.

² *Black's Law Dictionary*, 8th edition, (Thomson West, 2004), p 432.

A liability on claim which may be a specific sum of money due by agreement or otherwise or a non-monetary thing that a person owes another such as goods or services.

Sheila Bone³ defined debt as, a sum of money due from one person to another. It is germane to state that debt may or may not be quantifiable. It is quantifiable when it can be reduced to a specific value or monetary term such as, “thirty thousand naira (N30,000)”. On the other hand, it is unquantifiable when the subject or debt cannot be reduced to a specific or particular amount, term or value such as “the degree of gratitude or thankfulness” a person owes his benefactor.

It is worthy of note however, that for any debt to be a subject that can be recovered through the court process, it must be of a specific amount or value and the due date or the date when such liability ought to be liquidated must have passed. The above notwithstanding and although in the present world, debts are more expressed in monetary terms, they can still be in the form of goods and or services which someone owes another person (which could be reduced to monetary terms or values).

2.0 The Concept of Debt.

The concept of debt is as old as mankind and it is sure to remain in human race until the end of the world or when human beings may cease to be domiciled on the earth planet. This is because human beings cannot do without business transactions and agreements or contracts as the society is dynamic. In fact, man’s involvements in business transactions are on the increase in one form or the other on daily basis. Added to the above is the fact that in our business world today, it is utterly impossible for a person and or organization (at the micro level) and all persons and or organizations (at the macro level) to make effective demand⁴ of all goods and services they may be in need of. The consequence of the forgoing is that these economic units are compelled to take a variety of economic decisions which include purchases on credit and loan to finance some of the decisions / projects. Credit buying or purchases and loan advancement for future payments on specific date or dates have come to stay with mankind and even organizations.

³ *Osborn’s Concise Law Dictionary*, 9th edition, (Sweet & Maxwell, 2001), p 125. Debts were identified as: debt of record, e.g. recognisances and judgment debts; specialty debts, created by deed; simple contract debts; crown debts; secured debts, those for which security has been taken; and preferential debts.

⁴ The concept of effective demand is all about the goods and services which a person or a buyer can purchase and make ‘down’ payment without owing the seller. It is the demand that is backed or supported with the ability or willingness to pay. Effective demand is a concept that excludes purchases on credit and thus, indebtedness. It is important to remark that economic theories have revealed that human wants are insatiable due to the fact that the resources at the disposal of every human being and even organisations (to make payment or effective demand) are insufficient and of course scarce in comparison to their wants. This of course compels them to arrange their wants in order of priority in what is called a scale of preference and thereby affording them the opportunity of choosing which of the wants to satisfy and which of them is to be left out. See Femi Longe, *Amplified and Simplified Economics*, (Longe Ventures, 2015), pp. 4-6 and 257.

Furthermore, it must be noted that owing debt is a civil wrong, not a criminal wrong. In other words, debt liabilities are wrongs in the civil as against criminal domain because they essentially emanate from contracts and as such, civil procedures are the proper routes to be followed in debt recoveries. Consequently, the use of law enforcement agents in debt recovery drives under any guise or coloration of information to them is completely out of it. Law enforcement agents are expected to scrutinise and know the authenticity of any information before embarking on any assignment that could lead to the infringement on other people's rights. The foregoing was aptly captured by Olukayode Ariwoola, JCA (as he then was) in *Igwe v Ezeanochie*⁵ in the following words;

But they must go about it in the most legally approved and civilized way not to infringe or trample on the rights of others. As the saying goes, where someone's right ends, there the right of another begins.

3.0 Modes of Incurring Debt Liabilities

Many circumstances may constrain one to unavoidably incur debt. It suffices to say that debt liabilities may be incurred in various ways or methods and include but not limited to:

- i. Under the moneylenders law,⁶ obtaining a loan from a moneylender⁷ or a person⁸ with or without collateral security with a promise to pay or redeem the collateral on a future date which makes the borrower indebted to the lender to the tune of the amount of the loan after the due date;
- ii. Purchasing or buying⁹ things (goods and services) from somebody or a seller on credit or without making payment at all with a promise of future payment which makes the buyer to be indebted to the seller to the tune of the price of the goods and services after the agreed date of payment for them;
- iii. Buying goods from a seller and making a part payment for them with the consent of the seller and promising to pay the remaining amount on a future date(s) which makes the buyer indebted to the seller to the tune of the outstanding amount after the future date(s) both parties agreed to;
- iv. A seller or a service provider agreeing with a buyer or a customer to pay for goods or services by a number of installments in the future which makes the buyer or customer indebted to the seller or service provider to the tune of the outstanding installments after the due dates;
- v. Outstanding rent or rent in arrears which makes the tenant indebted to the landlord or owner of the rented property to the tune of the outstanding rent or amount of the rent arrears.

⁵ (2010) 43 WRN 123 at p. 155.

⁶ Lagos State Money Lenders Law, Cap. M7.

⁷ This may be an individual or organisation whose business is that of moneylending as defined in section 2 of the Lagos State Moneylenders Law, Cap. M7.

⁸ By section 4 of the Moneylenders Law of Lagos State, any person who lends money at interest or who lends a sum of money in consideration of a larger sum being repaid shall be presumed to be a moneylender until the contrary is proved.

⁹ Buying and selling are common mercantile activities connected with trade and commercial transactions or affairs

It must be emphasized that the above transactions will result in debt after the mutually agreed dates of payments by both the creditor and debtor. Prior to the mutually agreed date(s), such transactions may only be regarded as credit facilities or credit transactions which may be paid on or before the due date without it constituting a debt or being properly referred to as a “debt” that can be recovered through the court system. While the person who owes an obligation such as the payment of money to another is called a debtor, a person to whom a debt is owed is called a creditor or a *debtee*.

4.0 Plausible Justifications for Non-Payment of Debts by Debtors

As can be seen from the above, debts are meant to be paid. This is because the spirit behind credit and or loan transactions is not philanthropism, otherwise, such credit or loan will not amount to and be called a debt but a gift. Where debts are paid as and when due, it is for the mutual benefit of both the debtors and the creditors. This kind of situation does not require the application and enforcement of the concept of “debt recovery”.

However, as inherent in human nature, there is no uniform behaviour amongst human beings. The consequence is that while some debtors will honour their words and fulfill their promises by paying their debts in due time, many others will act to the contrary direction and refuse to pay such debts as and when due. This may be:

- (i) As a result of the debtor not having the money to pay at that material time; or
- (ii) As a result of bankruptcy of an individual or the insolvency of a company; or
- (iii) As a result of a deliberate refusal by the debtor to pay the debt; or
- (iv) As a result of putting money that is borrowed into an investment or project that failed.

Where refusal to pay debt is deliberate, such debtors may in some cases engage their creditors in endless litigations. In envisaging the possibility and consequences of the refusal of debtors to pay debts and the possible reactions of their creditors which may be grave, the law specifies and recognises the procedures for debt recovery in Nigeria. A dogged adherence to the lawful mode of debt recovery can promote a peaceful coexistence in the society.

5.0 Effect of Debt on the Creditors and the Debtors

Debt has positive and negative effects on the creditor and debtor. On the positive side, while debt allows a debtor to provide solution to some immediate problems which are capable of crippling his plans, dreams or business and if well managed, can pave a way for the debtor to break even, pay his debt and stand on his own thereby constituting growth and development to the larger society; it makes the creditor a promoter of growth and development in the society at the same time increase his capital especially when he did not grant interest free loans and where he attaches more charges to future payments. On the negative side, debt can smear the relationship between the creditor and debtor can result in litigation and various forms of violation of fundamental rights. The debtor may be seen as a person of little conscience and reputation by other persons while the creditor may be taken as a merciless person. Thus, where debt is paid as and when due, it is a win

– win for both the debtor and creditor whereas, where it is not paid as and when due, both parties are affected negatively in one way or the other.

6.0 Judicial Perspective to Use of Law Enforcement Agents in Debt Recovery

As can be seen from the immediate preceding subsection of this article, debt can impact negatively on both the creditor and debtor. While the debtor is battling with the heavy burden of debt, the creditor is being frustrated in recovering his money and thus, becomes impatient with the debtor in the absence of evidence of means of early payment of the debt.

Quite often, impatience on the part of the creditor leads to adoption of unethical or extra-judicial means and ways of debt recovery. The unconventional methods include the publication of the names of debtors in print and social media,¹⁰ use of aggression and even assault by the creditor on the debtor, use of debt collection agents¹¹ such as thugs¹² and law enforcement agents¹³ who often times harass, intimidate, molest, arrest and detain the debtors and their guarantors¹⁴ or sureties in the process of debt recovery. It is noteworthy that where the police or law enforcement agents are used by anybody through whatever information for debt recovery and in the process harass, molest, intimidate, arrest and the debtor, guarantor or surety or an innocent passerby, the police or law enforcement agent and the creditor on whose instance such arrest and detention or other violations were made are liable. This was rightly and succinctly couched by Odigie D. U¹⁵ thus:

Where the person detained did not commit a crime and he is arrested by a police officer, the police officer would be liable for unlawful arrest. If the arrest was masterminded by any person upon a false complaint, that person would be liable for false imprisonment. The plaintiff has the option of suing both the complainant and the police officer together, jointly and severally, for damages for unlawful

¹⁰ Some creditors who often times grant loans through the internet usually resort to blackmail and publication of the names of their debtors in the social media through text or sms and Whatsapp messages to all their contacts.

¹¹ Debt collection agents are individuals or persons that are normally contracted by creditors to recover debts from debtors on fees or commission which may be a percentage of the total debt. It is the interest of this fee that may make the collection agent to close his eyes to the lawful ways of recovering debts even when there are dire consequences for the use of legally unapproved methods.

¹² This includes known thugs and criminals as well as many parallel security and uniform persons in some security companies and vigilante groups.

¹³ Law enforcement agents are public officers who are paid from public funds and who ought to enforce public laws against the enforcement of the private right of anybody.

¹⁴ A guarantor is a person who pledges payment or performance of a contract of another, but separately, as part of an independent contract with the *obligee* of the original contract. He guarantees the good behaviour of person in a contract of employment or the repayment of a loan and who pledges to be held liable for any theft or connected infractions or the repayment of the loan respectively.

¹⁵ *Law of Torts: Text and Cases*, (Ambik Press Ltd., 2008), p. 27. See also, the case of *McLaren v Jennings* (2003) 3 NWLR (Pt. 808) 470 where the court specifically stated that, “the policemen are equally liable to the plaintiff, since the police are not empowered to be debt collectors

arrest and false imprisonment. It is irrelevant that the plaintiff enjoyed some comfort at his place of detention.

All the above unethical methods of debt recovery are what the law refers to as self-help.¹⁶ The use of self-help adopts harassment, intimidation, arrest, detention and even physical assault as tools. It results in the violation or infringement on the rights of debtors as well as other innocent persons who may coincidentally be at the scene where debts are being recovered. In fact, there are instances where self-help had resulted in the death of either party.

Beside statutes, the courts have severally condemned self-help especially as it relates to the use of policemen, soldiers and other uniform men in strong terms. Credence would be laid to this assertion by a brief examination of what the courts have said concerning self-help in some cases. In the case of *Igwe v Ezeanochie*,¹⁷ the court said:

The police are not and should not in any community of civilised people be used as debt or levy collectors. The courts have in strong terms condemned the use of policemen and soldiers in the resolution or settlement of disputes amongst people, as such use of policemen often lead to infringement on the fundamental rights of others.

In that case, while agreeing to the need of recovering debts but with emphasis on the legally approved ways, the court posited thus:¹⁸

There is no doubt that, what the respondents want more from the applicants is the payment of their levy for the security of their area. But they must go about it in the most legally approved and civilised way not to infringe or trample on the rights of others. As the saying goes, where someone's right ends, there the right of another begins. If the respondents had felt strongly against the refusal or failure to pay security levy by any or all of the applicants, there is definitely an approved way to recover or make defaulters of such levy to pay, rather than threatening, harassing and or intimidating as alleged by the appellants.

In the case of *Anogwe v Odom*,¹⁹ Ita George- Mbaba, JCA, said:

¹⁶ Self-help is an attempt to redress a perceived wrong by one's own action rather than through the normal legal process. See footnote 2 at p. 1391.

¹⁷ (2010) 43 WRN 135.

¹⁸ *Ibid.*, at p. 155.

¹⁹ (2016) LEPLR – 402 14; See also the cases of *Mclarence v Jemings* (2003) 3 NWLR (Pt. 808) 470; *Afribank v Onyima* (2004) 2 NWLR (Pt. 858) 654; *Nkpan v Nkume* (2001) 6 NWLR (Pt. 710) 543 and section 35 of the Constitution of the Federal Republic of Nigeria, 1999.

To make matters rather worse, the invitation of the Police to intervene in a matter that is purely civil in nature cannot be justified under any circumstances. The duties of the police as provided under section 4 of the Police Act, Cap. 359, Laws²⁰ of the Federation of Nigeria, 1990 does not include settlement of civil agreements between parties.

While warning persons who are fond of using the police in civil matters in that case, the court said, “A private individual who uses the police to settle score, would himself be liable for the wrongful act of the police.” In the same vein, the court stated in *Ogbonna v Ogbonna*,²¹ that,

The police have no business helping parties to settle or recover debts. We also deprecated the resort by the aggrieved creditors, to the police to arrest their debtors using one guise of criminal wrong doing or another.

Similarly, while frowning at persons who embrace ministerial act as against judicial one in resolution of civil matters at the same time admonishing the police to be wary of being used, the court stated in *Nkpa v Nkume*,²² thus:

We are of the view that, even if the police have been shown to have removed the mill at the defendant’s instance, the defendants would nevertheless have been liable for the wrongful seizure of the mill, since they would have set in motion a ministerial act as opposed to a judicial one.... Police officers must be wary of being inveigled into a situation in which they find themselves becoming partisan agents of wrong-doers in the pursuit of a private vendetta. Such show of power which is becoming too frequent in our society must be discouraged by all those who set any store by civilised values.

Although the police and creditors were specifically mentioned in the above cases, it is important to remark here that the police are only being used as representative of other security agencies or organizations as they are not excluded or spared of the condemnation arising from their usage in debts recovery. In the case of *Diamond Bank Plc. v H.R.H. Eze (Dr) Peter Okpara & Ors.*,²³ the Economic and Financial Crimes Commission (EFCC) as well as other security agencies were told in plain terms that their duties do not include investigation and or resolution of civil transaction disputes. This was eloquently stated by Bage, JSC, when he said:

It is important for me to pause and say here that the powers conferred on the 3rd Respondent, i.e. EFCC to receive complaints and prevent

²⁰ The Police Act was later incorporated as Cap. P19, Laws of the Federation of Nigeria, 2004, and now re-enacted as the Nigeria Police Act, 2020. The duties of the Police are contained in sections 4 and 5 of the 2020 enactment.

²¹ (2014) LPELR 22308; (2014) 23 WRN 48; *Osil Ltd. v Balogun* (2012) 7 WRN 143 at pp. 173-174.

²² (2001) 6 NWLR 543 at pp. 548-549.

²³ (2018) LPELR 43907 (SC).

and / or fight the commission of financial crimes in Nigeria pursuant to section 6(b) of the EFCC Act does not extend to the investigation and / or resolution of disputes arising or resulting from simple contracts or civil transactions in this case. The EFCC has an inherent duty to scrutinise all complaints that it receives carefully, no matter how carefully crafted by the complaining party, and be bold enough to counsel such complainants to seek appropriate / lawful means to resolve their disputes. What is even more disturbing in recent times is the way and manner the Police and some other security agencies, rather than focus squarely on their statutory functions of investigation, preventing and prosecuting crimes, allow themselves to be used by overzealous and / or unscrupulous characters for the recovery of debts arising from simple contracts, loans or purely civil transactions... The EFCC is not a debt recovery agency and should refrain from being used as such.²⁴

It is important for all persons including creditors to know that all human beings including debtors have fundamental rights²⁵ and as the Supreme Court perfectly and rightly held, “a fundamental right is certainly a right which stands above the ordinary law of the land.”²⁶ See *Badejo v Federal Ministry of Education*.²⁷

7.0 Legal Framework on Debt Recovery in Nigeria.

Although the courts are there to resolve issues of debt recovery, it is the expectation of the law that the parties especially the creditor must first attempt to use other lawful means of securing the payment of the debt before resorting to litigation. In fact, the law²⁸ requires evidence of effort geared towards out of court resolution before the commencement of a court action. Such evidence must be lodged before the Registrar before the court process is accepted for necessary action.²⁹ This we shall see vividly when we consider the conventional procedure to be adopted in debt recovery. As can be deduced from the requirement of submission of a statement of compliance with pre-action protocols to the Registrar before the institution of a debt recovery case, court litigation is the last resort. It is important to remark that lower and higher courts have jurisdiction to adjudicate cases of debt recovery. A combination of the geographical

²⁴ *Ibid.* See pp. 18-30. See also, the judgment delivered by Justice Iyabo Yerima of the Oyo State High Court in Suit No. M/377/2020 filed by *Mr Kolawole Oyedeji* against *EFCC and Messrs Segun Oloruntuyi and Olubunmi Adejorin* (unreported).

²⁵ The Constitution of the Federal Republic of Nigeria, 1999, as amended, provided for fundamental rights in chapter IV which include: right to life, right to dignity of human person, right to personal liberty, right to freedom of movement and right to freedom from discrimination. Thus, the use of law enforcement agents in harassing, intimidating, arresting and detaining debtors especially in civil cases constitute infringements on fundamental rights.

²⁶ Footnote 8 at p. 134.

²⁷ (1996) 43 LRCN 2100.

²⁸ Lagos Civil Procedure Rule, 2012.

²⁹ *Ibid.* See Order 3 Rule 2(1) (e). The evidence that must be brought before the Registrar include filing Form 01 and Statement of compliance with pre action protocol.

location of where the transaction took place, the nature of transaction, the parties involved as well as the amount or volume of money determines the court that has jurisdiction. Consequently, the Magistrates Court, the State High Court and the High Court of the Federal Capital Territory as well as the Federal High Court³⁰ have jurisdictions to determine debt recovery cases.

It is worthy of note that money lending is regulated by law.³¹ In Lagos State,³² no moneylending contract is enforceable unless a memorandum in writing of the contract was made and signed by the parties to the contract or their respective agents.³³ The memorandum shall contain all the terms of the contract including the date on which the loan is made, the amount of the principal and the rate of interest per annum.³⁴

Where the debtor is a corporate organisation, the law³⁵ provides that a company is deemed and can only be declared bankrupt or insolvent in Nigeria if it is unable to discharge a debt of a minimum N200,000 when demanded.³⁶

It is apposite to state that the law³⁷ specifies a time limitation of six (6) years excluding the year the contract was entered into and executed³⁸ for the institution of debt recovery cases involving debts emanating from simple contracts.³⁹ It must be remarked here that the period of limitation essentially starts counting when the cause of action arose.⁴⁰ Where the creditor delays his action and he allows 6 years to elapse after the cause of action has arisen, his right of action shall cease to exist.⁴¹ Besides the above, there is the requirement of writing in lending transactions and sale of land transactions

³⁰ This is on the authority of section 251(1) (d) which empowers the Federal High Court to exercise jurisdiction to the exclusion of any other court in civil causes and matters connected with or pertaining to banking, bank and other financial institutions including any action between one bank and another except disputes in respect of transactions between the individual customer and the bank

³¹ Money lending business was formally regulated concurrently by both the Federal and States Governments of Nigeria. However, with the repeal of the Moneylenders Act, the business is now regulated by the Moneylenders Laws of the various States of Nigeria. In this article, we shall make reference to the Lagos State Moneylenders Law since Lagos is the commercial hub of Nigeria.

³² Lagos State Moneylenders Law, Cap. M7.

³³ *Ibid.* See section 13(1).

³⁴ *Ibid.* See subsection 3.

³⁵ Companies and Allied Matters Act, 2020.

³⁶ *Ibid.* See section 572(a).

³⁷ Statute of Limitation Law.

³⁸ *Ibid.* See section 21(1) (a).

³⁹ There are two basic types of contracts namely formal and simple contracts. While a formal or contract under seal is a contract made by deed, a simple contract comprises all other contracts whether or not they are in writing or by words of mouth. See Sagay, I. E., *Nigerian Law of Contract*, 3rd edition, (Spectrum Books Limited, 2018), 7.

⁴⁰ A cause of action for the recovery of debt is said to arise or accrue when there is demand for the payment of the debt and there is refusal on the part of the debtor. Thus, where there is no demand made, there can never be a cause of action on which a legal action is to be founded. See the case of *Hung v E.C. Invest. Co. Nig. Ltd.*, (2016) LPELR – 42125 (CA).

⁴¹ Footnote 37. See section 12(1) (c) thereof and the case of *Okonta & Anor. v Egbuna* (2013) LPELR 21253 (Ca).

It should however be noted that although going by the Statute of Limitation, where a creditor fails to take action for the recovery of his debt within 6 years, he is statute barred, the court may still entertain the case where there has been a break in the chain of causation. For example, where a debtor expressly admits or pays part of the debt within that period of 6 years.

8.0 Lawful Means of Debt Recovery.

Having x-rayed the existing legal framework for the recovery of debts in Nigeria and the condemnation that had trailed the use of self-help and involvement of law enforcement agents in debt recovery, it is pertinent to briefly highlight the legally approved procedures for the recovery of debts in Nigeria which can guarantee a peaceful coexistence in the society. The procedural expectations of law in debt recovery are as follows:

8.1 Procedure Agreed upon by Contracting Parties:

Normally, there must be a contract between the creditor and the debtor before the issue of debt will arise. Such agreement may or may not be in writing. Whichever form the agreement takes, if the parties averted their minds to the possibility of default in payment and the possible procedure for the recovery of the debt, the parties especially the creditor should exploit that procedure accordingly. The procedures that are commonly specified by parties include submission to mediation, arbitration or institution of a court action or litigation.

8.2 Where there is no Procedure Agreed Upon by the Parties.

Where there is no clause in the agreement regarding the procedure to be followed in recovering the debt, the law expects that the creditor shall first of all make a demand for the payment of the debt. This may preferably be in the form of discussion with the debtor through physical contact or even telephone call. Where there is a refusal to pay the debt after such demand, the law expects that the demand for the payment of the debt should be made more formal through the writing of a letter of demand. Such letter is expected to contain the names and addresses of the parties, the amount of the debt, the period within which payment should be made and the consequences of non-payment. It is advisable that such letter should be dispatched through a medium by which acknowledgement is to be obtained.

8.3 Alternative Dispute Resolution without Third Parties:

Under this debt recovery procedure, the creditor and the debtor are expected to meet with a reconciliatory / conciliatory attitude and where possible (i) renegotiate the debt for instance agreeing to drop the accumulation of interest on the capital; and (ii) restructure the debt for instance giving room or creating avenue by the creditor to enable the debtor pay the debt on installments and or allowing payment(s) over a longer period of time. This is with a view of making it easy for the debtor to pay the debt at the same time affording the creditor the opportunity and possibility of recovering his money without the involvement of third parties and without litigation

8.4 Alternative Dispute Resolution involving Third Parties

Where the parties are not able to settle the issue among themselves, they can allow a

third party to come in and mediate between them. This may still involve renegotiation and restructuring but this time coming through a third party. Apart from mediation, thirdparty may be allowed to come in where both parties agree to submit themselves to an arbitration panel that may look into the dispute and come up with acceptable decisions to the parties and which may later be enforced by the court.

8.5 Litigation:

Where an individual is bankrupt or an organisation is insolvent and all the above discussed steps failed to secure the recovery of the debt in question, the creditor could still recover his money or debt due to him through the court in an action. A claimant maybe granted the right to apply summarily to court for issuance of a writ of summons to recover the liquidated debt. Where it is an organisation that has been declared insolvent in Nigeria having failed to discharge a debt of a minimum of N200,000, winding up proceedings may be commenced in court to be accompanied by an application for the preservation of the property of the company pending the determination of the suit.

9.0 Reasons for Resort to Extra-judicial Means in Debt Recovery.

The major factors that contribute to high incidence of debt recovery by extra judicial means include illiteracy and ignorance, delay in judicial process, level of impunity and lawlessness in the Nigerian society, poverty resulting in inability to fund litigation, etc. It is surprising but true that despite the fact that the law as espoused above is against the use of self-help, many creditors are adamant, blind and deaf to the law thereby allowing it to continue unabated in our society. Some of the theories or propositions that have been used to justify the use of self-help include the fact that litigation often times is expensive and time consuming. Although, ignorance of the law is not an excuse unless the law specifically states so, it is a bane or clog in the wheel of exterminating self-help. On the part of the creditor, he may not know the gravity of the infraction of law he is committing and on the part of the debtor, he may be ignorant of knowing his right and what to do should his right be violated. Again, some creditors are proud and tend to use self-help particularly through the use of law enforcement agents to establish their superiority over the debtor and boosting their ego by intimidating the debtors. Finally, there are many ignorant, overzealous and wheeling horses among the law enforcement agents who are willing to be used by creditors as tools for peanuts.

10.0. Concluding Remarks.

In concluding this article, we wish to unequivocally state that debt is a civil wrong whose redress lies in civil procedure that does not require self-help. Be that as it may, no justification of the use of law enforcement agents for debt recovery can stand the test of

time as it is all illegality. Nigeria is a country that is governed by the rule of law and must be seen as such in reality. Consequently, it is our considered view that the implementation of the suggestions made hereunder will bring sanity into our debt recovery system and we shall be better for it. It is hereby recommended as follows:

- (i) It should be made compulsory for all law enforcement agents at the point of enlistment and regular but periodic training to seat for and pass a course that should be centered on the distinctions between civil and criminal wrongs with an oath never to meddle with the enforcement of the civil and private right of anybody. This is against the backdrop that it is only through training and retraining of the law enforcement agents that the goal of strict adherence to the performance of their professional duties can be achieved;
- (ii) There should be regular jingles for public information or enlightenment possibly by the National Orientation Agency on the undesirability of self-help in our society. This is because illiteracy and ignorance are still very high in Nigeria such that judicial pronouncements and statutory provisions are relatively hidden from people who do not have the privilege of education and who are conversant with the law;
- (iii) Persons whose rights are violated in the process of self-help should be encouraged to seek redress. This may be through public enlightenment for people to know their rights and possibly through the provision of *pro bono* legal services;
- (iv) The rules of court should make it mandatory for exemplary and punitive damages to be awarded against any creditor who resorts to the use of law enforcement agents in a debt recovery drive and also the agency who allows its personnel to be so used.
- (v) Establishment of special courts for debt recovery.

In *Diamond Bank Plc v. Opara*⁴² Bage J.S.C said;

The power conferred on the EFCC by Section 6(b) of the EFCC Act does not extend to the investigation and/or resolution of dispute arising or resulting from simple contracts or civil transactions ... The EFCC is not a debt recovery agency and should refrain from being used as such.

Police have not legal powers to recover debts⁴³;

⁴² (2018) 7 NWLR (PT.1617) 114

⁴³ *McLaren v. Jennings* ((2003) FWLR (PT.154) 537, *Onagoruwa v. State* (1998) 1 ACLR 435 at 483, *Nkpa v. Nkume* (2001) 6 NWLR (PT.710) 543 at 49-550, *Afriland Plc v. Onyima* (2004) 2 NWLR (PT. 858) 654, *S.P.D.C (Nig) Ltd v. Olarenwaju* (2002) 7 NWLR (PT.792) 38 at 46, *Fawehinmi v. I.G.P* (2002) FWLR (PT.108) 1355 at 1385, *Abdullahi v. Buhari* (2004) 17 NWLR (PT.902) 278 at 303, *Jim -Jaja v. C.O.P* (2011) 2.NWLR (PT. 1231), or (2013) 6NWLR (PT. 1350) 225, *Arab Contractors Nig. Ltd v. Gillian Umanah* (2013) All FWLR (PT.683) 1977, *Igwe v. Eze Anuchie* (2010) 7NWLR (1192) 61, *Agbai v. Okogbue* (1991) 7NWLR (204) 391, *Oteri v.*

In *Ken Nwafor v. E.F.C.C*⁴⁴, B.A.Georgewill J.C.A said;
It is neither the duty nor the power or function of the EFCC to serve as agents of any person ,be it individual or a corporate citizen or even of Government at either the Federal or State or Local Government level, to collect debts from debtors, under any guise or pretext of investigating a crime in a purely civil dispute without anything of criminality.

In *Okafor v. AIG Zone 11, Onikan*⁴⁵, it was held that any complainant who engages the police or other Agencies with coercive powers to enforce a contract is liable in exemplary damages. See also: *Osil v. Balogun*⁴⁶, *Ibiyeye v Gold*⁴⁷, *Ogbonna v Ogbonna*⁴⁸, Section 4 of Police Act, Section 35(6) of the Constitution.

Written Undertaking to Pay Debt Signed by A Suspect at the Police Station
*Jacob Omman v. Darlington Ekpe*⁴⁹, *Oraka v. Oraka*⁵⁰.

Obtaining *Exparte* Order from Magistrates to freeze Bank Account of Suspect

In *Mrs. Eunice Odidiri & Ors v. IGP*⁵¹, Inyang Ekwo.J held that following the replacement of Section 7 of the Banker's Order, a Magistrate lacks power to entertain *Exparte* Motion from Law Enforcement Agents or individuals to grant *Exparte* order to freeze a suspect's account. It has been held in a line of decided cases that the practice is unconstitutional⁵².

Okorodudu(1970) All NLR 199, *Oman v. Ekpe* ((2000) NWLR(Pt. 641) 365 ., *Kure v C.O.P*(2020) 9NWLR(Pt.1729) 296 326(S.C), *Ibiyeye v Gold*(2012) ALL FWLR(Pt. 659) 1074, *A.C(A.O.A) Nig.Ltdv. Umoh* (2013) 4NWLR 323. *Nkpa v. Nkume*(2001) 6NWLR(Pt. 710) 543

⁴⁴ (2020) Legalpedia(CA) 11971

⁴⁵ (2019) LPELR-46505.

⁴⁶ (2012) 7WRN 143 at 173 at-174

⁴⁷ (2013) All FWLR) (Pt. 659) 1074

⁴⁸ (2014)23WRN 48, (2014) LPELR-22308,

⁴⁹ (2000)1NWLR(Pt.641)365,(1999)LPELR633

⁵⁰ (2018) LPELR47675

⁵¹ (Suit No. FHC/ABJ/CS/1635/2019) unreported, published in Punch Online Newspaper of 8/8/2020

⁵² *I.T.V v. Edo State Board of Internal Revenue* (2015) 12 NWLR (Pt. 1474) 442, *FBN Plc v ()* 15 NWLR (Pt. 1216)247, *Ogundoyin v. Adeyemi* (2001) 13 NWLR(Pt. 730) 403, *Okafor v. A.G Anambra State*((1991) 6NWLR(Pt. 200) 659,