

ENFORCEMENT OF FOREIGN JUDGMENTS UNDER NIGERIAN LAW

1.0 Introduction

Nigeria is a federation of 36 states with three tiers of government, namely, the Federal, State and Local Government. The legislative competence of each tier of government is constitutionally delimited. Enforcement of judgment falls with the exclusive legislative sphere of the Federal Government, which means that only the National Assembly can competently legislate on matters relating to enforcement of judgment¹.

Nigeria is not party to any bilateral or multilateral convention on the recognition and enforcement of judgments. The enforcement of foreign judgments in Nigeria is, therefore, governed by two statutes, namely, the Reciprocal Enforcement of Judgments Ordinance² (the Ordinance) and the Foreign Judgment (Reciprocal Enforcement) Act³ (the Act). The Ordinance was enacted during the colonial era and was not repealed upon the enactment of the Act in 1961. The Act preserved the Ordinance and provides that the Ordinance shall cease to apply to any part of Her Majesty's dominions once the Minister of Justice has, pursuant to the power conferred on him under the Act, made an order extending Part 1 of the Act to that part of Her Majesty's Dominions.⁴

2.0 Enforcement of Foreign Judgments under the Ordinance

2.1 The Ordinance was enacted to facilitate the reciprocal enforcement of judgments obtained in Nigeria and in the United Kingdom, and other parts of Her Majesty's Dominions and Territories under Her Majesty's protection. By various proclamations, the Ordinance was extended to judgments of various territories and dominions under Her Majesty's protection, including the Supreme Court of the Gold Coast Colony, Colony and Protectorate of Sierra Leone, Courts of the Chief Commissioners of Ashanti and of the Northern Territories of the Gold Coast, Supreme Court of the Colony of the Gambia, Supreme Court of the State of Victoria, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Island, St. Lucia, St. Vincent and Trinidad and Tobago.

¹ See item 57 in the Second Schedule (Exclusive Legislative List) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

² This Ordinance was originally enacted in 1922 but is now in Chapter 175 in the Laws of the Federation of Nigeria and Lagos, 1958.

³ Originally enacted in 1961 but now Chapter C35 in the Laws of the Federation of Nigeria 2004.

⁴ Section 9(2) of the Act.

2.2 Time within which to apply for registration of judgment under the Ordinance

Section 3(1) of the Ordinance provides that where a judgment has been obtained in the High Court in England or Ireland, or in the Court of Session in Scotland, the judgment creditor may apply to a High Court at any time within twelve (12) months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered. Based on this provision, Nigerian courts have, in a long line of cases, held that any application for registration in Nigeria of a judgment obtained in a High Court in England must be registered within a period of twelve months from the date the judgment was made otherwise such an application would be held to be time barred and refused⁵. Although this provision suggests that the court could extend the time within which a judgment creditor may apply to register a judgment, we are not aware of any case where the court actually exercised that jurisdiction. Under Nigerian law, an application for extension of time within which to register a judgment outside the period statutorily provided would involve the exercise of the judge's discretionary power which is required to be exercised judicially and judiciously and having regard to the entire circumstances of the matter.

2.3 Ordinance Applicable to Money Judgment Only

A judgment to which the Ordinance applies is any judgment or order given or made by a court in any civil proceedings, whether before or after the commencement of the Ordinance, whereby any sum of money is made payable, and includes an award in proceedings or in an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by the court in that place. In order for an arbitral award to be elevated to the status of a judgment which can be registered and enforced under the Ordinance, the award debtor is required to have applied and obtained leave of the court in the country where the award was made to enforce the award in the same manner as a judgment of that court.⁶

2.4 Grounds for Refusing Registration of Judgment under the Ordinance

2.4.1 Section 3(2) of the Ordinance provides that no judgment shall be ordered to be registered if any of the following grounds exists:

(a) the original court acted without jurisdiction;

⁵ See for example, *Marine & General Assurance Company Plc v. Overseas Union Insurance limited & 7 Others* (2006) 4 N.W.L.R. (Pt. 971) p.622 where the Supreme Court held that an application on 16th May 1994 for registration in Nigeria of a judgment of the High Court, Queens Bench Division, Commercial Court in England which was made on 25th May 1990 was time barred under the Ordinance. Similarly, in the case of *Andrew Mark Macaulay v. RZB of Austria* (2003) 18 N.W.L.R. (Pt.852) 286, the Supreme Court of Nigeria also held that an application made on 18th August 1997 for registration of an English judgment (of the High Court, Queens Bench Division, Commercial Court in England) which was made on 19th December 1995 was incompetent and time barred.

⁶ See *Tulip (Nigeria) Ltd v. N.T.M.S.A.S* (2011) 4 NWLR (Pt.1237) p. 254 at p.274, paras. (F-G)

- (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;
- (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court, and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;
- (d) the judgment was obtained by fraud;
- (e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal against the judgment; or
- (f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

2.4.2 The unfortunate consequence of the provision of section 3(2)(b) is that if the defendant is not ordinarily resident or carrying on business within the jurisdiction of the original court and did not previously agree to submit to the jurisdiction of the foreign court, he could simply ignore the proceedings against him even if duly served with the court documents and any judgment entered against him would be unenforceable on the ground that he did not submit to the jurisdiction of the court. This was the scenario in the case of **Grosvenor Casinos Ltd v. Ghassan Haloui**⁷ where the judgment debtor, who was not ordinarily resident in the United Kingdom, was duly served with all the court processes in Nigeria but he simply ignored them and never submitted to the jurisdiction of the English court. He successfully set aside the registration of the judgment against him based on this provision. However, the Supreme Court criticized the provision and called for its amendment. The Court held⁸ that *“it is particularly alarming that when in a case like this, a person ordinarily resident in Nigeria obtains credit in England and in satisfaction issues a cheque which is later dishonoured, the judgment obtained against him cannot be enforced in Nigeria. Under section 3(2)(b) above, the judgment of a court in England cannot be enforced in Nigeria on the ground that a defendant has not submitted to the jurisdiction of the English Court. There is an urgent need to reform our law on the matter. It is an open invitation to fraud and improper conduct.”*

3.0 Enforcement of Foreign Judgment under the Act

Section 3(1) of the Act provides as follows:

⁷ (2009) N.W.L.R. (Pt.1149)p. 309

⁸ At p.338, paras. (E-F).

“(1) the Minister of Justice if he is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the superior courts in Nigeria may by order direct-

(a) that this Part of this Act shall extend to that foreign country; and

(b) that such courts of that foreign country as are specified in the order shall be deemed superior courts of that country for the purposes of this Part of this Act.

3.1 Time for Registration of judgment under the Act

3.1.1 Section 4(1) of the Act provides that *“a person being a judgment creditor under a judgment to which this Part of this Act applies, may apply to a superior court in Nigeria at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in such court, and on any such application the court shall, subject to proof of the prescribed matters and to the provisions of this Act, order the judgment to be registered.”*

There is no evidence that the Minister of Justice has exercised his powers under section 3 of the Act to extend Part 1 of the Act to any country and, consequently, the provision of section 4 of the Act remains inchoate. However, section 10(a) of the Act provides:

“Notwithstanding any other provision of this Act:

(a) A Judgment given before the commencement of an order under section 3 of this Act applying Part I of this Act to the foreign country where the judgment was given may be registered within twelve months from the date of the judgment or such longer period as may be allowed by a superior court in Nigeria; and

(b) Any judgment registered under the Reciprocal Enforcement of Judgments Ordinance at the time of the coming into operation of an order made under section 3 of this Act in respect of the foreign country where judgment was given shall be treated as if registered under this Act and compliance of rules applicable to the former Act shall satisfy the requirement of rules made under this Act”.

3.1.2 In the case of **Maculay v. R. Z. B Austria**⁹, where the issue was the time within which to register an English judgment, the Supreme Court held that the applicable law was the Ordinance and that the judgment ought to have been registered within a period of twelve months. The court, however, considered the effect of section 10(a) of the Act and held that *“...since the Minister of Justice has not yet exercised his power under section 3 of the [Act] extending the application of Part 1 of the Act to the United Kingdom where the*

⁹ (2009) N.W.L.R. (Pt.1149) page 298, para (H) and p. 299 para (A).

judgment in question as given, then section 10(a) of the said Act can also apply.” The Court further held as follows:

“By this provision, irrespective, regardless or in spite of any other provision in the 1990 Act, any judgment of a foreign country including United Kingdom to which Part I of that Act was not extended, can only be registered within 12 months from the date of the judgment or any longer period allowed by the court registering the judgment since the provisions of Part I of the said Act had not been extended to it. Section 4 of the 1990 Act which speaks of registering a judgment within 6 years after the date of judgment only applies to the countries where Part I of the said Act was extended, that is to say, when the Minister made an order under the 1990 Act; and in this case it was not.”

- 3.1.3 In the case of **Telelobe America Inc. v. 21st Century Tech. Ltd**¹⁰, the Court of Appeal held, relying on section 10(a) of the Act, that a judgment of the Fairfax County, Virginia, United States of America, was registerable in Nigeria within a period of twelve (12) months from the date the judgment was made, since the Ordinance does not apply to US judgments and the Minister has not made any order extending Part 1 of the Act to the United States of America.

3.2 Judgment Registered under the Act

3.2.1 Circumstances in which a registered judgment may or must be set aside.

The Act provides for circumstances in which a registered judgment may or must be set aside. A judgment may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously on the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter. On the other hand, a registered judgment must be set aside if the registering court is satisfied that:

- i) the judgment is not a judgment to which Part 1 of the Act applies or was registered in contravention of the provisions of the Act;
- ii) the courts of the country of the original court had no jurisdiction in the circumstances of the case;
- iii) the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) received notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
- iv) the judgment was obtained by fraud;

¹⁰ (2008)17 N.W.L.R (Pt.1115)

- v) the enforcement of the judgment would be contrary to public policy in Nigeria; or
- vi) the rights under the judgment are not vested in the person by whom the application for registration was made.

3.2.2 Recovering the judgment sum in Foreign Currency

Section 4(3) of the Act provides, where the sum payable under a judgment is expressed in a currency other than the currency of Nigeria, the judgment shall be registered as if it were a judgment for such sum in the currency of Nigeria as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum payable.¹¹ It is to be noted, however, that section 4(3) is under Part 1 of the Act which requires the Minister's order to come into effect and since the Minister has yet to issue an order extending Part 1 of the Act to any country section 4(3) also remains inchoate. What this means, therefore, is that until the Minister makes an order under section 3 of the Act, any judgment registered under section 10(a) of the Act can be recovered in the currency of the judgment.

3.2.3 Effect of a Registered Judgment

Once a judgment is registered, it shall for the purposes of execution be of the same force and effect as the judgment of the registering court. Section 4(2) of the Act further provides that proceedings may be taken on a registered judgment and the judgment sum shall carry interest and that the registering sum shall have the same control over execution of the judgment as if it were its own judgment.

4.0 Conclusion

Nigeria has a fairly robust legal regime for enforcement of foreign judgments. Judgments that are not enforceable under the Ordinance can, pursuant to section 10(a) of the Act, be enforced within twelve (12) months from the date of the judgment. What this means is that the judgment of any foreign country could be registered and enforced in Nigeria either on the basis of the Ordinance (for judgements of the United Kingdom or the other jurisdictions identified in paragraph 2.1 above) or section 10(a) of the Act (for all other jurisdictions). Due to the fact that section 4 of the Act (which permits foreign judgements to be registered within 6 years) remains inchoate, all applications to a Nigerian court for the registration and enforcement of a foreign judgement must be made within 12 months from the date on which the foreign judgement was given by the foreign court.

¹¹ The Ordinance does not contain a similar provision and so judgments registerable under the Ordinance can be registered and recovered in the currency of the judgment.