Dispute Resolution
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THE RULES, PRACTICE, AND PROCEDURE FOR THE ENFORCEMENT OF FOREIGN JUDGMENTS IN NIGERIA

1. INTRODUCTION

Disputes are as universal as trade and human interrelation. This means that wherever there is human presence and interaction, in any form whatsoever, disputes are bound to follow, naturally. Resolution of disputes in the modern world is generally entrusted to the judiciary, which entails the court system and every player in the justice system. In Nigeria, judicial powers are vested in the courts, just like in many other countries across the globe, which are collectively referred to as the superior courts of record, established under the Constitution of the Federal Republic of Nigeria 1999 (as amended).[2] These powers include the determination of disputes involving any person in Nigeria as well as the enforcement of court decisions.[3] Nonetheless, a Nigerian court would not, as a matter of course, enforce a judgment delivered by a foreign court. On this premise, and given the universality of disputes, what happens where a foreign court delivers a judgment that affects a person or entity in Nigeria, and the judgment creditor is unable to enforce the judgment against them in the country of the foreign court?

2. LEGAL FRAMEWORK

Enforcement of foreign judgments in Nigeria is primarily governed by two federal statutes: the *Reciprocal Enforcement of Judgments Ordinance* of 1922 and the *Foreign*

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2 See, section 6 of the Constitution.
3 Section 6 (6) of the Constitution.

Judgments (Reciprocal Enforcement) Act.[4] In special cases, the rules of common law may also come into play.[5]

These federal laws are briefly reviewed below:

2.1 Reciprocal Enforcement of Judgments Ordinance of 1922

The *Reciprocal Enforcement of Judgments Ordinance* of 1922 (“the 1922 Ordinance”) also known as the *Reciprocal Enforcement of Judgments Act*, Laws of the Federation of Nigeria 1958, applies to judgments delivered by the superior courts of the United Kingdom and Commonwealth countries, not being countries covered under the *Foreign Judgments (Reciprocal Enforcement) Act* 2004 ("the 2004 Act"), that is, the Minister of Justice has not by order extended the application of the 2004 Act to such countries. Since the 2004 Act did not expressly repeal the 1922 Ordinance,[6] both laws apply side by side in their respective domain.[7]

Under the 1922 Ordinance, an application for the registration of a foreign judgment must be made within 12 months after the date of the judgment. However, the court may extend the duration in exceptional circumstances.[8]

2.2 Foreign Judgments (Reciprocal Enforcement) Act[9]

This law generally applies to judgments obtained from the courts of Commonwealth countries and other foreign countries with reciprocal arrangements with Nigeria. The 1922 Ordinance still applies to parts of Her Majesty’s Dominion to which it already extended prior to the commencement of the 2004 Act. By section 3 of the 2004 Act, the Minister of Justice of the Federation of Nigeria (the Minister) is empowered to extend the application of Part 1 of that Act, with regard to registration and enforcement of foreign judgments of superior Courts, to any foreign country, including United Kingdom if he is satisfied that the judgments of our superior Courts will be accorded similar or substantial reciprocity in those foreign countries. This marks another line of divergence between the application of the 1922 Ordinance and the 2004 Act. Once an order is made by the Minister under section 3 of the 1990 Act in respect of any Commonwealth country to which the 1922 Ordinance earlier applied, the latter law ceases to apply from the date of that order. Any judgment from such country obtained

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4 Cap F35, LFN 2004. See also, *Miden Systems Ltd v. Bbc Chartering & Logistic Gmbh & Co.* (2019) LPELR-48929 (CA).

5 See, *Willbros West Africa Inc & Ors v. Mcdonnel Contract Minning Ltd*. (2015) LPELR-24808 (CA).

6 Section 9 of the 2004 Act.

7 See, *Macaulay v. R.Z.B., Austria* [2003] 18 NWLR (Pt. 852) 282; (2003) LPELR-1802 (SC).

8 Section 3(1) of the 1922 Ordinance.

9 Cap F35, LFN 2004

after the coming into force of the order shall thereafter be enforced under the 2004 Act.[10]

Applications for registration of judgments under the 2004 Act are required to be made within 6 years of the date of judgment.[11]

3. CONDITIONS PRECEDENT TO ENFORCEMENT[12]

The general conditions for the enforcement of foreign judgments in Nigeria include the following:

3.1.1 The judgment originates from a superior court. This excludes judgments delivered by superior courts on appeal from the decision of an inferior court.[13]

3.1.2 The judgment must be rendered by a court of competent jurisdiction. This jurisdictional requirement could be said to have more to do with the judgment debtor (personal jurisdiction) than it has to do with the subject matter of the action in question, where the action was one in *personam*. This appears so given that the 2004 Act deems the original court to have had jurisdiction as long as the judgment debtor submitted to its jurisdiction in any of the manners listed under section 6(2)(a) of the Act.[14]

3.1.3 The judgment must be final and conclusive (even if subject to appeal in the foreign country or there is the pendency of an appeal against the judgment).[15] It must totally determine the rights of the parties with finality.[16]

3.1.4 The judgment is for a definite sum of money, excluding taxes, fines, or penalties.[17]

3.1.5 The judgment must not be obtained by fraud or contrary to public policy.[18]

3.1.6 There is reciprocity between Nigeria and the originating country (for the 2004 Act). This means that the foreign country must also be willing to enforce Nigerian court judgments.

3.1.7 Registration.[19]

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10 *Macaulay v. R.Z.B.*, *supra*; section 9(2) of the 2004 Act.
11 Section 4 of the 2004 Act.
12 See, section 3 (2) of the 1922 Ordinance.
13 Section 3(2) of the 2004 Act.
14 Section 6(2)(a) & (b).
15 Section 3(3).
16 Section 3(2)(a).
17 Section 3(2)(b).
18 Section 6(1)(a)(iv-v).
19 Section 8.

4. PROCEDURE FOR ENFORCEMENT

There are two main methods of enforcement: Statutory enforcement and Enforcement under common law.

4.1 Statutory Enforcement

This refers to enforcement of foreign judgment brought under either the 1922 Ordinance or the 2004 Act. Enforcement under the 1922 Ordinance is governed by the Enforcement Rules (the Rules) made pursuant to section 6 of the 1922 Ordinance. Under the rules and pursuant to age-long practice and procedure before the courts, registration of foreign judgment involves the following step-by-step procedure:

4.1.1 An application in a High Court by way of Petition ex parte or on notice for leave to register a foreign judgment.

4.1.2 The application is to be accompanied by an Affidavit stating the full name, title, business, and address of the parties; the foreign court and the details of the judgment; that the judgment is enforceable and that the judgment creditor is entitled to enforce the judgment; that the judgment is final and unsatisfied.

4.1.3 The Affidavit must exhibit a certified true copy of the judgment and, if necessary, a translation.

4.1.4 The court examines the application and the judgment, and if satisfied that the necessary conditions as highlighted above have been met, grants leave to register.

4.1.5 The notice in writing of the registration is served on the judgment debtor.

4.1.6 The judgment debtor is allowed a specified period within which he may apply to set aside the registration.

4.1.7 If the judgment debtor does not apply to set aside the registration within the specified period or where the application to set aside is refused by the Court, the registered judgment can then be enforced in Nigeria like any other judgment delivered by a Nigerian court.

It should be noted that enforcement under the 2004 Act is significantly regulated by the rules of the particular registering court, pursuant to section 5 of the 2004 Act.

4.2 Enforcement under common law

This is an unusual foreign judgment enforcement procedure through the commencement of a fresh action at Common Law. It is usually employed where enforcement under statute is impracticable such as where the judgment sought to be registered originates from a country with which Nigeria does not have a reciprocal

judgment enforcement arrangement, or where the enforcement is statute barred and there are no exceptional grounds for an extension of time by the court.

The action takes the form of a liquidated money demand, with the foreign judgment serving as documentary evidence in support of the Claimant's case. In **Willbros West Africa Inc & Ors v. Mcdonnel Contract Minning Ltd.,**[20] the court pronounced on this option in the following words:

> Clearly, since the 2004 Act is inoperative for reasons earlier given, a judgment creditor who does not desire to register a foreign judgment or who is caught up with the provision as to time for registering such foreign judgment, may choose to bring an action on the foreign judgment, with the judgment serving as documentary evidence of the fact that the judgment debtor is indebted to him on the sum covered by the judgment. See TOEPFER OF NEW YORK v. EDOKPOLOR (1965) ALL NLR 301; NML CAPITAL LIMITED v. REPUBLIC OF ARGENTINA (2011) LPELR-17805 (UKSC).[21]

However, this procedure may be impossible in cases where the 2004 Act would have ordinarily been applicable. This is because section 8 of the 2004 Act provides that, "*No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by any Court*." This is unlike the provision of section 3(1) of the 1922 Ordinance, which makes registration discretionary.[22] For ease of reference, the provision is reproduced below:

> Where a judgment has been obtained in the High Court in England or Ireland, or in the Court Session in Scotland, **the judgment creditor may apply to a High Court** at any time within twelve months after the date of the judgment or such longer period as may be allowed by the Court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case it thinks it just and convenient that the judgment should be enforced in Nigeria and subject to the provisions of this Ordinance, order the judgment to be registered accordingly. [emphasis supplied]

5. POSSIBLE GROUNDS OF OBJECTION TO ENFORCEMENT[23]

A judgment debtor may oppose a registration or apply for the setting aside of the registration of foreign judgment within the limited period on any of the following grounds:

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20 (n5) s*upra*.

21 *Ibid*, per Abimbola Osarugue Obaseki-Adejumo, JCA (pp 43 - 44 paras D - A).

22 See, (n5) generally, *Willbros West Africa Inc & Ors v. Mcdonnel Contract Minning Ltd*.

23 See, section 3 (2) of the 1922 Ordinance.

i. Lack of jurisdiction of the foreign court.[24]

ii. Fraud in obtaining the judgment.[25]

iii. Breach of natural justice.

iv. Judgment contrary to Nigerian public policy.[26]

v. Judgment already satisfied or discharged.[27]

vi. Applicant does not bear the rights conferred under the judgment.[28]

vii. The judgment cannot, for any reason, be enforced by execution in the country of the original court.[29]

viii. The judgment debtor was not properly notified of the proceedings of the original court,[30] etc.

6. CONCLUSION

In conclusion, the legal terrain for the registration of foreign judgments in Nigeria is quite complex and thus requires the services of experienced legal professionals. Professionals must also be wary of common pitfalls such as the absence of reciprocity, the use of uncertified true copies of judgments sought to be registered, statute of limitations, jurisdictional issues, etc.

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[24] Section 6(1)(a)(ii) of the 2004 Act.
[25] Section 6(1)(a)(iv).
[26] Section 6(1)(a)(v) of the 2004 Act.
[27] Section 4(1)(a).
[28] Section 6(1)(a)(vi).
[29] Section 4(1)(b).
[30] Section 6(1)(a)(iii).