



ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS IN NIGERIA

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Introduction

All judgments of courts in Nigeria are effective from the date of their delivery or from such a date as the adjudicating judge(s) appoints.¹ Save for where an order to stay execution pending appeal has been procured and granted, all judgments are to be obeyed and where there is a refusal to obey any judgment, the judgment creditor or the successful party can after a period of grace, as provided in the Rules of Court,² commence enforcement proceedings.³ The party seeking to enforce a judgment is called Judgment Creditor while the party against whom judgment is to be enforced is known as Judgment Debtor.

In Nigeria, there are various means of enforcing a judgment depending on the type of judgment obtained. For enforcement proceedings to however be successful the law⁴ requires that the right procedure be adopted, failing which such enforcement proceedings may be rendered a nullity. The law not only provides for enforcement of local judgments, it also stipulates the procedure for enforcing judgments procured from foreign jurisdictions.

Enforcement of Foreign Judgments

¹ Order 35 Rule 2 of the High Court of Lagos State (Civil Procedure) Rules 2012. It varies subject to the provisions of the rules of Courts for different states of the Federation

² This can vary subject to the provisions of the rules of Courts for different states of the Federation

³ Order 35 Rule 5 of the High Court of Lagos State (Civil Procedure) Rules 2012.

⁴ The Principal Law that governs Enforcement Procedure in Nigeria is Sheriffs and Civil Process Act, Cap S6, LFN 2004. It has however been adapted to Laws of the State by most States of the Federation.

Enforcement of foreign judgments can be carried out in two ways in Nigeria. Either by way of **“Reciprocity”** or by **“Action at Common Law”**. However, to be able to adopt any of the two modes, the following conditions must be met:

1. The Judgment must be have been delivered by a superior court;
2. It must be a final, certain and conclusive judgment;
3. It can only also be enforced in a superior court of record in Nigeria;
4. The Judgment must have been delivered within six (6) years of the application for enforcement;
and
5. There must be payable thereunder a sum of money, but not a tax, fine or penalty.⁵

Reciprocity

Under this head, it is important to note that enforcement of foreign judgments in Nigeria is governed by two statutes, namely, the Reciprocal Enforcement of Judgments Ordinance⁶ (the Ordinance) and the Foreign Judgment (Reciprocal Enforcement) Act (the Act).⁷ The Ordinance was applicable to the United Kingdom and parts of her Majesty’s Dominions including Nigeria. The Act on the other hand applies to judgments of the court of Commonwealth countries and other foreign countries.

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.⁸

This Reciprocity process is begun by registration of the foreign judgment in any superior court in Nigeria provided that there is reciprocity of laws in the country of the foreign judgment creditor providing Nigerian litigants same opportunities for the enforcement of judgments procured in Nigeria. The judgment creditor can apply to a superior court in Nigeria to have the judgment registered, which will invariably give it the status of a judgment of such a Nigerian Court, thereby allowing the foreign Judgment creditor proceed to enforce it in Nigeria as if it was a judgment of that court. If the judgment is an order to pay a sum in foreign currency, such sum shall be paid in local currency at the prevailing rate as at the time the foreign judgment was procured.⁹

⁵ S. 3, Foreign Judgments (Reciprocal Enforcement) Act 1961 Cap C35 Laws of the Federation of Nigeria 2004

⁶ This Ordinance was originally enacted in 1922 but is now in Chapter 175 in the Laws of the Federation of Nigeria and Lagos, 1958.

⁷ 1961 Cap C35 in the Laws of the Federation of Nigeria 2004.

⁸ Section 9(2) of the Act.

⁹ S.4 (3) Foreign Judgments (Reciprocal Enforcement) Act

Can a registered foreign judgment be set aside before enforcement?

The judgment debtor may apply to set aside the registration of a foreign judgment on the following grounds:

1. Non-compliance with the provisions of Foreign Judgments (Reciprocal Enforcement) Act;
2. Lack of service of the Originating process leading to the foreign judgment;
3. That the judgment was obtained by fraud;
4. That the foreign court that gave the judgment lacked jurisdiction;
5. That the enforcement of the judgment would be contrary to Nigerian public policy; and
6. That the rights under the judgment are not vested in the applicant.¹⁰

Action at Common Law

Enforcement of Judgment by way of Action at Common Law is a simple process. It is usually used by judgment creditors from non-commonwealth countries or from commonwealth countries that have no enforcement of judgment reciprocal laws. For the enforcement of judgment by way of Action at Common law, the judgment must be for a definite sum of money, where it is a subject matter other than money, such subject matter must be situated within the jurisdiction of the court that gave the judgment at the time of delivery of the judgment.

The action can be commenced at the High Court of Nigeria using the foreign judgment as the cause of action against the judgment debtor. It is usually instituted under the Summary Judgment proceedings. The foreign Judgment Creditor alongside his originating process shall file an application and depose to an affidavit that the Judgment Debtor has no defence to the Claim, if the application is granted, judgment will be entered and execution will follow.

Enforcement of Foreign Arbitral Awards

Arbitral awards where not voluntarily complied with, may require the involvement of a court to enforce compliance. Typically there is an expectation that arbitral awards are to be complied with without delay, since the purpose of arbitration, unlike other forms of alternative dispute resolution mechanisms, is to arrive at a binding decision on a dispute. This position is buttressed by the provisions of the United Nation Commission on International Trade Law (UNCITRAL) Rules which state that an arbitral award shall be final and binding on the parties and that the parties undertake to carry out the award without delay.¹¹

¹⁰ S.6 Foreign Judgments (Reciprocal Enforcement) Act

¹¹ Article 32 UNCITRAL Rules

Enforcement of arbitral awards is governed by the Arbitration and Conciliation Act 1988 (the Arbitration Act).¹² The law makes provision for both the conduct of arbitration and enforcement of the awards. The binding effect of an arbitral award under the Act is profound; it extinguishes the rights of either party to pursue an action in the decided dispute, unless an aggrieved party applies to set aside the award on the ground of misconduct, fraud or ultravires.¹³

First, a foreign arbitral award can be recognized and enforced in Nigeria. Section 51 of the Arbitration Act provides that ***“An arbitral award shall, irrespective of the country in which it is made, be recognized as binding and subject to this section and section 52 of this Act, shall upon application in writing to the court, be enforced by the Court.”***¹⁴

Secondly, a foreign arbitral award can equally be enforced in Nigeria by an action under the common law based on the doctrine of obligation as was the case in ***Alfred C. Toepfer Inc. of New York vs. John Edokpolor (Trading as John Edokpolor & Sons) (1965) 1 All N. L. R. 292***, and also by registration under the Foreign Judgments (Reciprocal Enforcement) Act.

Enforcement under the Lagos State Arbitration Law 2009

Sections 56 & 58 of the Lagos state Arbitration Law 2009 provide that ***“an arbitral award irrespective of the jurisdiction or territory in which it is made shall be recognized as binding, and shall upon application in writing to the court by a party, be enforced by the court.”*** This provision applies to both domestic and international awards irrespective of whether they are New York convention awards or Geneva convention awards. As it were, awards made in any jurisdiction is recognizable and enforceable on application to the Lagos State High Court, this seems necessary as Lagos being the commercial hub of the country, serves as the point of contact for virtually all foreign investors who may wish to bring their businesses into the country.

General Requirements for Enforcement of foreign arbitral awards in Nigeria

The party relying on an award or applying for its enforcement shall supply:

- a. The duly authenticated original award or a duly certified true copy thereof;
- b. The original arbitration agreement or a duly certified copy thereof; and
- c. Where the award or arbitration agreement is not made in English Language, a duly certified translation thereof into English Language.

Timeline for Enforcement of Foreign Judgments and Awards in Nigeria

The process of registering a foreign judgment varies depending on the circumstances of each case. Generally however, where the application for registration and enforcement is unchallenged, the

¹² Cap A18 Laws of the Federation of Nigeria 2004

¹³ Sections 29 and 30 of the Arbitration Act Cap A18 Laws of the Federation of Nigeria 2004

¹⁴ S. 57 of the Act defines Court as either High Court of a State, the High Court of Federal capital Territory or the Federal High Court.

process could last between six (6) months and one (1) year. It would invariably take longer time however if the application is challenged by any of the available means, especially grounds listed under Section 6 of the Act¹⁵. Not only that, the judgment debtor may, if his application to set aside is refused, appeal against the judgment, thereby leading to full blown litigation. To avoid these attendant troubles, it is advisable for the judgment creditor to ensure strict compliance with all rules throughout the process leading to the original judgment.

Issues arising from Enforcement of Foreign Judgments and Awards

Having noted that the procedures for enforcement of judgment obtained elsewhere and the award are similar albeit with slight differences, it goes without saying that parties in any of the two processes run into similar problems, some of which are not peculiar to them alone, the problems are borne out of administrative laxity which are highlighted as follows:

1. The failure of the 1961 Act to expressly repeal the 1922 Act making for two laws to operate under one regime: This has increased the challenges to the enforcement of foreign judgments and awards by making the 1922 Ordinance the applicable law in most cases for the recognition and enforcement of foreign judgments. This 1922 Ordinance, though a commendable piece of legislation, cannot meet the needs of the present age and has been relied upon by judges in a number of occasions in enforcing judgment given by any of the Commonwealth countries.

Our take is that, the problem would have been mitigated if section 9 of the Act which preserved the effect of the 1922 Ordinance, pending an order made by the Minister pursuant to section 3(1) of the Act has been given life by the Minister of Justice. There is a pending matter before the Federal High Court of Nigeria, Abuja division seeking to compel the Minister to issue the aforementioned Order to extend application of the Act to both Commonwealth and non-Commonwealth countries. Unless and until the Order of mandamus is procured, the principle of common law will continue to apply where necessary to cure this lacuna.

2. Time limitation for registration: This challenge is an offshoot of the multiplicity of laws discussed above, the Supreme Court decisions in **Andrew Mark Macaulay v. RZB of Austria**¹⁶ and **Marine & General Assurance Company Plc V. Overseas Union Insurance limited**¹⁷ are to the effect that judgments of the superior courts in the United Kingdom and parts of her Majesty's Dominions to which the 1922 Ordinance applies, must be registered within 12 months.¹⁸ Such judgments cannot benefit from the provision of Section 4 of the 1961 Act for registration of the judgment of a foreign court within 6 years until the Minister of Justice has made an order under section 3 of the 1961 Act, extending the application of the Act to judgments of courts in the country in which the relevant judgment is made. Again, we believe that the same remedies highlighted above will still be applicable here.

¹⁵ Foreign Judgments (Reciprocal Enforcement) Act

¹⁶ (2003) 18 N.W.L.R. (Pt.852) 286

¹⁷ (2006) 4 NWLR (Pt. 971) p.622

¹⁸ As provided in section 3 of the 1922 Ordinance

3. The argument of Jurisdiction: It has been argued often times that where the judgment to be enforced relates to matters such as trademarks, patents, admiralty, aviation etc. the Federal High Court should have jurisdiction for enforcing such judgment by virtue of exclusive jurisdiction enjoyed in such matters, and with the setting aside of a foreign judgment relating to Companies and Allied Matters Act¹⁹ which was registered at the Lagos State High Court rather than the Federal High Court in 2014²⁰, the argument has become heightened.

While we believe that the question of jurisdiction is irrelevant in registering a foreign judgment or award in so far as the original court/arbitral panel had jurisdiction, it may be wise only for the sake of time management to adopt such reasoning to avoid attendant controversies and delays, since parties can approach any of the superior court of records for enforcement.

4. Public Policy: This particular problem of enforcement of foreign judgment and arbitral award is peculiar we must say, the allowance of challenge of the registration on the ground of public policy as stipulated in the Act²¹ has been the major bane of enforcement lately. When there are no justifiable means of opposing the enforcement, judgment debtors have devised means of hiding under the challenge of public policy to deny judgment creditors their rightful litigation proceeds or sometimes just to frustrate and or delay the enjoyment of the proceeds of the judgment.

Most times, enforcement proceedings take years in court and then we wonder whether there ever will be an end to it. Closely related to it is appeal against the registration, while we are aware of everybody's right to fair hearing, we propose that the right of appeal in enforcement proceedings be severely restricted. For instance, the requirement of leave to pursue an appeal should be made sacrosanct such that judgment creditor's gains will not be left hanging by the strategic act of filing unnecessary appeals by the losing party, achieving this will require a lot of legislative effort as well as sincerity on the part of all the officers of the law, lawyers and judges alike.

Conclusion

The rationale for the dichotomy in the laws governing enforcement of foreign judgment and arbitral award in Nigeria is the administrative laxity and legislative complacency. While it is obvious that Nigeria is prepared to enforce judgments and awards obtained beyond its shores, the challenges arising out of the inconsistent laws have remained a stumbling block. While the principles of common law as well as the option of Action at common law on enforcement remain our way out, the legal regime for enforcement of foreign judgment and arbitral award in Nigeria needs serious reworking. The Courts should also be proactive in breaking new grounds and developing the jurisprudence on enforcement of foreign judgment in Nigeria in accordance with the essence of reciprocity of judgments and other means that will enable every successful foreign litigant achieve its aim within the shortest possible timeframe. This will improve the prospects of Nigeria as a business destination, encourage the much needed foreign direct investment and enhance the growth of our economy.

¹⁹ Cap 20 Laws of the Federation of Nigeria 2004

²⁰ Access Bank Plc. v. Dr. Erasmus Akingbola (unreported)

²¹ S.6(1)(a)(v) Foreign Judgments (Reciprocal Enforcement) Act