



**Q& A**  
on  
**Enforcement of Foreign Judgment**  
in Nigeria

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## 1. What are the applicable laws to the registration of foreign judgments in Nigeria?

- The Reciprocal Enforcement of Judgments Ordinance 1922 (also often referred to as “The Reciprocal Enforcement of Judgments Act, Laws of the Federation of Nigeria 1958”) - referred to in this article as the Ordinance;
- The Foreign Judgments (Reciprocal Enforcement) Act 1960 (also often referred to as “The Foreign Judgments (Reciprocal Enforcement) Act Cap F35, Laws of the Federation of Nigeria 2004”) - referred to in this article as the Act; and
- Judicial Authorities.

## 2. Which of these two statutes is currently in force in Nigeria?

There has been controversy as to whether the 1922 Ordinance has been repealed by the 1960 Act. This is particularly in light of the fact that the Ordinance has been left out of all the compilations of the Laws of the Federation of Nigeria till date. The Supreme Court in the case of *Macaulay v RZB of Austria*<sup>1</sup> appears to have settled this controversy, by its decision that since the Act did not specifically repeal the Ordinance and since the Minister has not exercised his power under section 3 of the Act to extend the Act to any country, the Ordinance still applies to the United Kingdom and to other parts of her majesty’s dominion to which it was extended by proclamation under section 5 of the Ordinance. The Supreme Court’s decision in the Macaulay case has been upheld by the Supreme Court in *VAB Petroleum Inc v Momah*<sup>2</sup> and also followed by the Court of Appeal in *Kabo Air Ltd v The O’Corporation Ltd*<sup>3</sup>. These decisions concerning the Ordinance accord with the legal principle that a statute repeals another by implication only if the provisions of the later statute are so inconsistent with and so repugnant to those of the older one that they cannot stand together. See *the Governor of Kaduna State v Kagoma*<sup>4</sup>.

As regards the applicability of the Act, Section 3 of the Act empowers the Minister of Justice to make an order/proclamation extending the provisions of the Act with regards to the registration and enforcement of foreign judgments to any foreign country if he is

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<sup>1</sup> (2003) 18 NWLR Pt 852 at 282

<sup>2</sup> (2013) 14 NWLR (Pt. 1374)

<sup>3</sup> (2014) LPELR – 23616 (CA).

<sup>4</sup> (1982) LPELR – 3167 (SC).

satisfied that the judgment of Nigeria's superior courts will be accorded similar reciprocity in those foreign countries. The Minister of Justice till date has not made such an order extending the provisions of the Act to any country. The effect of the Minister's failure to make an order was considered by the Supreme Court in the case of *Marine & General Assurances Company Plc v Overseas Union Insurance Limited & Others*<sup>5</sup> where Mohammed, JSC stated that:

*'the entire provisions of Part I of the [1960 Act] containing section 4 of the Act require a positive action on the part of the Minister of Justice of the Federation to bring that part of the Act into force. Part I... comprises sections 3, 4, 5, 6, 7, 8, 9, and 10. From the provisions of section 3 of the Act . . . it is quite clear that the provisions of Part I of the Act remains (sic) dormant or inactive until life is breathed into them by an order promulgated by the Minister . . .'*

In an apparent contradiction of this decision, the Supreme Court in the Macaulay case, and more recently in the case of *VAB Petroleum Inc v Momab supra* endorsed the application of Section 10 of the Act as an interim provision under which judgments of a foreign court can be registered in Nigeria pending the making of an order by the Minister under Section 3 of the Act. The court in *VAB Petroleum* stated that a precedent had already been laid by the Supreme Court in the Macaulay case. The court (per Kalgo, JSC) held that:

*"... It is to be noted that the provision of this section, especially paragraph (a) quoted above in my view has made a very strict proviso, that notwithstanding ANY OTHER PROVISION OF THIS ACT: which is defined by Section 1 thereon to mean: "the Foreign Judgment (Reciprocal Enforcement) Act" of 1961 as contained in Cap 152 of the Laws of the Federation, 1990. This court in the case of Macaulay v R.Z.B Austria (2003) 18 NWLR (Pt. 852) observed as follows: 'By this provision in the 1990 Act, any judgment of a foreign country including United Kingdom to which part 1 of that Act was not extended, can only be registered within twelve months from the date of the judgment or any longer period allowed by the court registering the judgment since the provisions of Part 1 of the said Act had not been extended to it. Since section 4 of the 1990 Act which speaks of registering a judgment within 6 years after the date of the judgment only applied to the countries where Part 1 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.'"*

Nonetheless, the courts have on numerous occasions stated that some other sections of the Act are yet to come into force due to the failure of the Minister to make an order. For

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<sup>5</sup> (2006) 4 NWLR (Pt. 971)

example, the Supreme Court in the case of *Marine General Assurance Company Plc v Overseas Union Insurance Limited & Others (supra)* held that Section 4 of the Act could not be available to any litigant. Conversely, the learned justice went on to state in the same case that “at the same time since the Minister of Justice has not yet exercised his power under Section 3, Section 10(a) can also apply”. See also *Teleglobe America Inc v 21<sup>st</sup> Century Tech Ltd.*

### 3. Do these legislations apply to all the states in Nigeria?

Both of these legislations were made at the federal level and as such, apply to all states within the Country.

### 4. To what territories do these legislations apply?

The proclamation made pursuant to the Ordinance states that the Ordinance applies to Barbados, Bermuda, British Guiana, Gambia, Gibraltar, Grenada, Jamaica, Leeward Islands, St. Lucia, St. Vincent and Trinidad & Tobago.

With regards to the Act, as stated above, the Minister is yet to make an order extending the application of Part 1 of the Act to any country. Nonetheless, it appears from the Macaulay and VAB Petroleum decisions among others, that the courts would be willing to register judgments of any country within 12 months of delivery of same, pursuant to section 10(a) of the Act.

### 5. What is the limitation period for enforcing judgments?

Under the Ordinance, judgments may be registered within 12 months or such extended period as the court may allow upon application. Under the Act, pursuant to Section 3, after the Minister of Justice has made an order extending the Act to a country, judgments from that country may be registered within 6 years of delivery. Section 10(a) however provides that before the commencement of an order extending the Act to a country, judgments of that country may be registered within 12 months of delivery of same, or such extended period as the court may allow upon application.

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<sup>6</sup> (2008) 17 NWLR (Pt. 1115).

## **6. What is the procedure to be followed for registration of foreign judgments?**

The rules made pursuant to the Ordinance provide that an application to register a foreign judgment may be brought by petition ex parte or on notice. However, a judge before whom an ex parte petition is brought can at his discretion order that the other party be put on notice. This application is to be supported with an affidavit of facts stating that to the best of the deponent's belief, the judgment creditor is entitled to enforce the judgment and exhibiting the judgment or a certified copy thereof.

The Act on the hand does not provide a specific means of application to register a judgment. Section 5(b) of the Act states that a high court has the power to make rules prescribing matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters. So far, no rules have been made. In practice however, these applications are brought by way of originating motion.

## **7. On what conditions can registration of foreign judgments be refused?**

Under the Ordinance, a high court is to refrain from registering a judgment where:

- The original court acted without jurisdiction
- The judgment debtor 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
- The judgment debtor being the defendant in the proceedings was not duly served with the originating 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
- Judgment was obtained by fraud
- Judgment debtor satisfies the registering court either that an appeal is pending or that he is entitled and intends to appeal against the judgment

- 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

Under the Act, Section 4 states that the judgment may not be registered where

- It has been wholly satisfied
- It could not be enforced by execution in the country of the original court

With regards to the Act however, the Court of Appeal in the Teleglobe case stated that Section 4 is inactive pending the making of an order by the Minister.

#### **8. On what conditions can an order of the Nigerian court registering a foreign judgment be set aside?**

The Ordinance does not specify on what grounds the registration of a judgment may be set aside. However, section 6(a) the Act provides that the registration of a foreign judgment shall be set aside in the following circumstances:

- the judgment is not a judgment to which this Part of this Act applies;
- that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
- that the judgment debtor, being the defendant in the proceedings in the original court, did not receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
- that the judgment was obtained by fraud;
- that the enforcement of the judgment would be contrary to public policy;
- that the rights under the judgment are not vested in the person by whom the application for registration was made

Section 6(b) further provides that the registration of 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”.

#### **9. Can the courts consider the conditions for setting aside before making an order for registration?**

In the *Teleglobe* case, the Court of Appeal stated the provisions of section 6 of the Act which deals with instances where an order registering a judgment may be set aside should generally only be considered where the application before the court is one for setting aside and not one for registration. The Court however made an exception to the foregoing by stating that the provisions of section 6 could be considered during the hearing of an application to register a judgment only if there is documentary evidence to show that any of the subjections of section 6 applies in that instance.

#### **10. What courts have the jurisdiction to register a foreign judgment?**

The Ordinance confers jurisdiction on the high court but does not specify whether it is the State High Court or the Federal High Court. The Act on the other hand confers jurisdiction on superior courts and states that a superior court in Nigeria means High Court of a State or Federal Capital Territory and Federal High Court.

With regards to subject matter jurisdiction, the High Court in the relatively recent case of *Access Bank Plc v Akingbola*<sup>7</sup> refused to register a judgment because the subject matter of the suit fell within the exclusive jurisdiction of the Federal High Court. The Federal High Court in turn, in *Suit No. FHC/L/CP/469/2014* between the same parties refused to register the same judgment on the ground that the court in England had refused the judgment debtor’s leave to appeal the decision. This decision was based on the fact that disputes relating to the operation of the Companies and Allied Matters Act, Cap C20, LFN, 2004, the subject matter of the dispute, fall under matters in the Nigerian constitution which can be appealed as of right.

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<sup>7</sup> (Unreported, Suit No M/563/2013)

These decisions of the State High Court and Federal High Court are particularly interesting as the applicable statutes make no mention of subject matter jurisdiction of the registering courts vis a vis the original courts.

#### **11. What is the legal effect of registration?**

The Ordinance provides that where a judgment is registered, it shall as from the date of registration be of the same force and effect as if it had been a judgment originally obtained from the registering court. Section 4(2) of the Act also provides that a registered judgment shall have the same force as a judgment given by the registering court.

#### **12. Is there a difference between registration and enforcement?**

Registration is the process of getting the judgment recognised by the Nigerian courts after a court hearing whereas enforcement arises only after the judgment has been recognised and thus registered by the Nigerian courts. Upon registration, the judgment is treated as a judgment of the registering court and enforced in the same manner. Enforcement of a judgment does not ordinarily involve court hearing.

#### **13. How can judgments be enforced after being successfully registered by a Nigerian court?**

Some common means of executing and enforcing judgments in Nigeria are by:

- Writ of Fieri Facias
- Garnishee Proceedings
- Judgment summons

#### **14. What types of judgments can be registered?**

The Ordinance defines judgments as any judgment or order given by a court in civil proceedings under which a sum of money is payable.



Under the Act, judgment is defined as:

“a judgment or order given or made by a court in any civil proceedings and shall include an award in proceedings on 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 a court in that place, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party.”

Section 3(2)(b) goes further to state however that there must be money payable under a judgment for it to qualify as a registrable judgment, and it must be conclusive between the parties.

Thus, the Act widens the scope of the types of judgments which may be registered.

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