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Foreign judgments in Nigerian courts in the last decade: a dawn of liberalization

Abubakri Yekini*

Abstract

Nigeria has largely been governed by military dictators since it gained independence from Great Britain in 1960. Sustained democratic transition is a recent phenomenon and that, possibly, accounts for the recent increase in foreign direct investment, international trade and trade in services between Nigeria and its trading partners such as the European Union, China and the US. The surge in international trade has caused an increase in transnational litigation and requests for the enforcement of foreign judgments in Nigeria. An assessment of reported cases reveals that the majority of these cases were decided roughly between 2005 and 2015. There is a need to evaluate the Nigerian regime for enforcement of foreign judgments, with a particular focus on judicial opinions and legislative policy in this area. The article seeks to achieve this by analyzing the two relevant statutes on judgment enforcement and judicial precedents over the last decade. The article finds that while reciprocity appears to be the policy behind the relevant statutes, the courts have adopted a liberal and pragmatic approach towards recognition and enforcement of foreign judgments. The article therefore concludes that while the liberal approach of the Nigerian Supreme Court is a welcome development, it needs to be supported by clear, consistent, and robust judicial reasoning. This will set a clear agenda for lawmakers tasked with aligning the relevant statutes with already established judicial approach and, above all, will make it easier to offer legal advice to foreign investors.

1. Introduction

Nigeria inherited the common law tradition from Great Britain and the development of its legal system is influenced by it. By virtue of various received laws,¹ the common law of England, the doctrines of equity and statutes of general application in force as from the 1st January 1900 are directly enforceable in Nigeria insofar as local Nigerian laws and the circumstances of the case permit. It is usually the case that the common law rules, together with statutory provisions, govern many transactions.

Nigeria is a Federal State with a written Constitution,² which sets out governmental powers, including those of the courts.³ There are thirty-six states and each state has a High Court⁴ and

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1 For instance, section 32 Interpretation Act, 2004; section 13 High Court of Lagos State Law 2003.

2 1999 Constitution of the Federal Republic of Nigeria (as amended).

3 Sections 4, 5 and 6 of the Constitution outline the legislative, executive and judicial powers respectively.

4 Ibid., section 270.

a Federal Capital Territory within the Federation. The Federal High Court⁵ and the National Industrial Court⁶ are also established by the Constitution and each has exclusive jurisdiction over its area of competence. The State High Courts have residual jurisdiction over legal issues not exclusively reserved for the Federal High Courts and the National Industrial Courts.⁷ Hence, most civil and commercial matters are litigated at the State High Courts. The State High Courts, the Federal High Court and the National Industrial Court all have jurisdiction to register foreign judgments.⁸

Since independence, Nigeria has largely been ruled by military dictators who typically suspend the Constitution and implement draconian decrees. The return to democratic rule in 1999 and the entrenchment of the rule of law have accounted for a recent increase in foreign direct investments, international trade, and services in Nigeria.⁹ This boosts investors' confidence and creates assurance that an impartial tribunal can settle disputes and that the judgments are enforceable. Over the years, Nigerian trade relationships with major trading partners like the EU, US and China have increased.¹⁰ This trend has brought about an increase in transnational litigation and requires the enforcement of foreign judgments in Nigeria. While there is an established regime for recognition and enforcement of foreign judgments in Europe and with other key trading partners, a similar regime does not exist in Nigeria. The little work that has been done tends to focus on the more controversial aspects of this particular area of law rather than focusing on finding solutions to fill this gap.

The thesis of this article is that while it cannot be denied that the legal regime for the enforcement of foreign judgments in Nigeria has been in crisis, a clear body of precedents has emerged in the last decade from the Supreme Court decisions which state that all foreign judgments are enforceable by common law action or statutory registration, and for the latter, this rule applies as long as the application is filed within 12 months of the delivery of the judgment.

5 Ibid., section 249. The Federal High Court and National Industrial Courts have judicial divisions in many States of the Federation.

6 Ibid., section 254A.

7 Section 251 grants the Federal High Court exclusive jurisdiction over a wide range of matters including the management of companies, bankruptcy and insolvency, intellectual property, admiralty matters, banking (excluding the banker-customer relationship). Section 254C grants the National Industrial Court exclusive jurisdiction over any labour, employment and industrial relation matters.

8 Neither the Reciprocal Enforcement of Judgments Ordinance, 1922 nor the Foreign Judgments (Reciprocal Enforcement) Act, 1961 defines what is meant by a registering court. However, since the Rules made pursuant to the 1922 Ordinance make reference to a 'High Court of Nigeria' without qualification, then any High Court, including a Federal High Court and a National Industrial Court fall under the description. See *Grace Jack v. University of Agriculture, Makurdi* (2004) LPELR-1587(SC). Following *Adetona v. Igele General Enterprises Ltd* (2011) LPELR-159(SC), it is advisable that a judgment creditor files an application for registration in a court that has subject matter jurisdiction over the underlying cause of action.

9 Obida Gobna Wafure and Nurudeen Abu, 'Determinants of Foreign Direct Investment in Nigeria: An Empirical Analysis', *Global Journal of Human and Social Science* (10) 2010, pp. 26, 30.

10 The EU currently is Nigeria's largest trading partner. See http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113427.pdf. To sustain this relationship, a Nigeria-EU Business Forum was established to further facilitate trading activities between the two parties. See <http://www.eunbf.eu> (accessed 6 April 2017).

The article seeks to depart from existing works¹¹ by arguing that the Supreme Court is motivated by pragmatic reasons to save foreign judgments from the reciprocity regime laid down in the relevant statutes. To support this argument, this article shall rely on relevant Supreme Court decisions and the decisions of the lower courts. It will be argued that recent authorities appear to have laid to rest the controversies highlighted by existing works on the enforcement of foreign judgments in Nigeria. The article shall be limited to an exposition of the law and practice of foreign judgment enforcement in Nigeria. As such, recourse to foreign sources will only be taken where necessary.

2. Common law action and statutory registration

2.1 Common law

Foreign judgments are enforceable by common law action and registration in Nigeria. The common law method of giving effect to a foreign judgment is through an enforcement action. Common law characterizes the rights obtained under a foreign judgment as an actionable debt. The said debt creates an obligation that is binding on the judgment debtor.¹² Therefore, to collect the judgment sum, a creditor needs to commence a fresh suit against the judgment debtor. Being a fresh action, the judgment creditor must ensure that all prerequisite steps to instituting a fresh action are fully complied with.¹³ The most important task is for the judgment creditor to approach the court that has jurisdiction over the subject matter and the judgment debtor.¹⁴ Usually a State High Court has personal jurisdiction over all residents of the State¹⁵ and special jurisdiction over civil and commercial transactions that are closely connected to it.¹⁶

The common law recognizes a foreign court's findings and decisions and will not allow litigants to reopen what has previously been decided between them; provided the issues, subject matter and parties are the same.¹⁷ This is known as the *res judicata* rule. In order to ease the task of judgment creditors, the law allows minimal defence to be raised against foreign judgment. An applicant can take advantage of the summary judgment procedure provided by the rules of court to have the matter heard expeditiously.¹⁸ The summary judgment procedure allows a claimant who believes that a defendant has no serious defence to the action to file, along with the writ of summons, an application for summary judgment. The courts are empowered to

11 See footnotes 29-32.

12 *Toepher Inc of New York v. Edokpolor* (1965) All NLR 301; *Mudasiru & Ors v. Onyearu & Ors* (2013) LPELR.

13 Such as finding out the appropriate court that has both subject matter and territorial jurisdiction over the claim, examining the limitation law to ensure that the action is not statute barred, serving of pre-action notice and so on.

14 *In personam* jurisdiction of Nigerian courts is plagued by some controversies. See Abubakri Yekini, 'Comparative Choice of Jurisdiction Rules in Cases having a Foreign Element: Are there any Lessons for Nigerian Courts?', *Commonwealth Law Bulletin* (39) 2013, pp. 333-358; Gbenga Bamodu, 'In Personam Jurisdiction: An Overlooked Concept in Recent Nigerian Jurisprudence', *Journal of Private International Law* (7) 2011, pp. 273-295.

15 See for instance section 10, High Court of Lagos State Law, Chapter H3, Laws of Lagos State, 2003.

16 Section 101 of the Sheriff and Civil Process Act, Chapter S6, Laws of the Federation of Nigeria, 2004.

17 *Fei Business Enterprise Ltd v. Credible Finance and Investment Ltd* (2002) 30 WRN 32.

18 Order 11, High Court of Lagos State (Civil Procedure) Rules 2012.

deal with the action on the strength of the affidavit evidence before the court instead of going through a full trial. This is consistent with the *res judicata* principle. Where the court forms an opinion that the response of the judgment debtor, communicated through a counter affidavit, discloses no good defence, a judgment is entered for the judgment creditor.¹⁹

To succeed, a claimant needs to prove that the foreign judgment was final and conclusive, the foreign court had international jurisdiction, the judgment debtor was duly served, the judgment was not obtained by fraud and that it was not contrary to public policy.²⁰ A claimant who is able to successfully establish these conditions is entitled to have his claims granted. The common law still plays a significant role, as it remains a viable option for judgment creditors who are not able to enforce foreign judgments by registration, due to time constraints for instance.

2.2 Statutory registration

Foreign judgments are enforceable by registration under the reciprocal enforcement regime. Two statutes govern registration of foreign judgments. The Foreign Judgments Ordinance of 1922 (1922 Act) deals with judgments between Nigeria and the United Kingdom, together with a few other Commonwealth States.²¹ The Ordinance is a model of the English Administration of Justice Act 1920. A second statute, Foreign Judgments (Reciprocal Enforcement) Act 1961²² (1961 Act) was enacted with a view to phasing out the 1922 Act and extending the 1961 Act to other States outside the Commonwealth.

The 1961 Act is not radically different from the 1922 Act. The major differences are well set out in a recent work by Dr Olawoyin.²³ However, for the sake of clarity, the summary of the differences shall be stated here. First, the 1922 Act applies only to the United Kingdom and a few other Commonwealth States, while the 1961 Act can be extended to any State.²⁴ Second, the 1922 Act requires foreign judgments to be registered within 12 months after the delivery of the judgment by the originating court but the 1961 Act sets a time limit of six years.²⁵ Third, registration under the 1922 Act is discretionary but it is mandatory under the 1961 Act, subject to available defences.²⁶ Fourth, the 1961 Act disallows judgment to be enforced in foreign currency while there is no such restriction under the 1922 Act.²⁷ Fifth, the 1922 Act preserves common law action but it is prohibited under the 1961 Act.²⁸ The concurrent application of the Acts has caused confusion and crisis in the judgments registration scheme as a result of incon-

19 Order 11 Rule 5(2), High Court of Lagos State (Civil Procedure) Rules 2012.

20 The judicial attitudes of Nigerian courts to these concepts are addressed later on in this article.

21 Ghana, Sierra Leone, Gambia, Jamaica, Trinidad and Tobago. Others are Newfoundland (now part of Canada), New South Wales and Victoria (both of which now form part of Australia).

22 The Act is a model of the English Foreign Judgments (Reciprocal Enforcement) Act 1933.

23 Adewale A. Olawoyin, 'Enforcement of Foreign Judgments in Nigeria: Statutory Dualism and Disharmony of Laws', *Journal of Private International Law* (10) 2014, pp. 129-156.

24 Section 3 and section 3 respectively.

25 Section 3 and section 4 respectively.

26 *Ibid.* The 1922 Act states that a judge 'may' register a foreign judgment if satisfied that the requirements for registration have been met but the 1961 Act uses 'shall' instead of 'may'.

27 Section 4(3) 1961 Act.

28 *Ibid.*, section 8.

sistent interpretations from the courts. This issue is being addressed by a number of Nigerian authors, notably Olaniyan,²⁹ Olawoyin,³⁰ Olukolu³¹ and Bamodu.³²

2.2.1 Concurrent application of the 1922 and 1961 Acts

The controversy surrounding the relationship between the two Acts can be traced back to the omission of the 1922 Act from the compilation of the Laws of the Federation of Nigeria³³ after 1958. It was thought that the 1922 Act was no longer in force in Nigeria since the enactment of the 1961 Act. This erroneous thought was first expressed by the Nigerian Supreme Court in *Murmansk State Steamship Line v. Kano Oil Millers Ltd.*³⁴ The misconception was later resolved by the Supreme Court in *Macaulay v. Raiffeisen Zentral Bank Osterreich. Akiengesell Schaft (RBZ) of Austria*³⁵ where it was held that the 1922 Act was not repealed by the enactment of the 1961 Act. The *Macaulay* case involved the registration of an English judgment outside the 12-month period required by the 1922 Act. The lower court purportedly applied the 1961 Act of which the limitation period is 6 years. The Supreme Court set aside the registration by holding that the provisions of the 1961 Act remain inchoate until they are brought to life by a ministerial order. The Court, however, further noted that section 10 of the 1961 Act allows provisional registration of foreign judgments pending a ministerial order.

Three years later, the Court had the opportunity to clarify its decision in the *Macaulay* case. In *Marine & General Assurance Company Plc v. Overseas Union Insurance Limited & Ors*,³⁶ the Respondent obtained judgment in England against the Appellant in the sum of £427.77 and \$92,470.80. The judgment was delivered in May 1990 and the Respondent sought to register it at the Lagos High Court in May 1994. The Appellant argued before the Lagos High Court

29 Hakeem A. Olaniyan, 'The Commonwealth Model and Conundrum in the Enforcement of Foreign Judgment Regime in Nigeria', *Commonwealth Law Bulletin* (40) 2014, p. 76.

30 Olawoyin 2014 (*supra* note 23).

31 Yomi Olukolu, 'The Enforcement of Foreign Judgments in Nigeria: Scope and Conflict of Laws Questions', *Afr. J. Int'l & Comp. L.* (23) 2015, p. 129.

32 Gbenga Bamodu, 'The Enforcement of Foreign Money Judgments in Nigeria: A Case of Unnecessary Judicial Pragmatism?', *Oxford University Commonwealth Law Journal* (12) 2012, pp. 1-31.

33 The Federal Government of Nigeria, at various intervals, carries out a compilation of all extant statutes. These statutes are arranged in alphabetical order with each being assigned a distinct chapter. The essence is to update existing pieces of legislation in a single document (which runs into several volumes). In the process, the statutes that have been repealed or are generally no longer in use are expunged from the update. The last compilation was made in 2004. Reference to many Nigerian statutes, thus, end with the citation: 'Laws of the Federal Republic of Nigeria, 2004'. The recent compilations were published in 1958, 1990 and 2004 respectively. The 2004 compilation does not refer to the commencement year but the compilation year. Hence, some quotations from reported cases refer to the 1961 Act as Foreign Judgments (Reciprocal Enforcement) Act 1990 or simply 1990 Act (for the 1990 edition).

34 (1974) All NLR 893.

35 (2003) 18 NWLR (Pt 852) 282. This was the first time the Supreme Court had the opportunity to make a pronouncement on the controversy. The Court of Appeal had earlier held that the 1922 Act remains extant as there was nothing in the 1961 Act to suggest its repeal. See also *The Mercantile Group (Europe) AG v. Victor Aiyela* (1995) 8 NWLR (Pt 414), 450.

36 (2006) 4 NWLR (Pt 971) 622.

that the application was filed three years after the delivery of the judgment by the originating court. This is outside the 12-month time limit imposed by the 1922 Act. The Lagos High Court upheld the argument and set aside the registration.

On appeal, the Court of Appeal held that the lower court was wrong to have set aside the registration because:

‘It would appear that learned trial Judge applied section 3(1) of the Foreign Judgment (Reciprocal Enforcement) Act^[37] to the judgment emanating from the High Court of Justice, Queens Bench Division, Commercial Court, England. He however omitted to consider section 4 of the Act, which by virtue of section 9 of the Act is applicable to judgment from any part of the Commonwealth other than Nigeria. However, close reading of section 3(1) of the Act^[38] will indicate that the Minister of Justice is empowered to extend the application of Part 1 of the Act to the judgment given in superior courts of a foreign country in which substantial reciprocity of treatment will be assured regarding the enforcement in that foreign country of judgments given in superior courts in Nigeria. In any case section 10 of the Act^[39] expressly states that “a judgment given before the commencement of an order under section 3 of this Act applying Part 1 of this Act to the foreign country, where the judgment was given may be registered within twelve months from the date of judgment or such longer period as may be allowed by a superior court in Nigeria”.’

By this conclusion, the Court of Appeal thought that the lower court ought to have considered section 10 of the 1961 Act. The Court interpreted the section to mean that the 1961 Act could be applied to judgments obtained from England or elsewhere before the commencement of the ministerial order. The registration was therefore allowed under section 4 of 1961 Act, which gives a time period of up to six years for registration.

The Supreme Court agreed with the Court of Appeal that the 1922 Act was applicable to judgments from the English courts. The Court also confirmed that the 1961 Act was applicable by virtue of the proviso in section 10(a) even in the absence of a ministerial order, extending the application of the Act to any country. The Supreme Court, however, reasoned that a judgment creditor could not take the benefit of other provisions of the Act other than section 10(a). The order of the Lagos High Court setting aside the registration of the judgment was therefore

37 I.e. the 1961 Act.

38 ‘Part 1 – Registration of Foreign Judgments

3(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.’

39 ‘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 1 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.’

reinstated. After this decision, the interpretation of section 10 of the 1961 Act required clarification.

Section 3 of the 1961 Act requires a ministerial order to extend Part 1 of the 1961 Act⁴⁰ to any State that guarantees reciprocal treatment of Nigerian judgments. Section 10(a) of the 1961 Act however contains a saving/transitional clause which provides that 'a judgment given before the commencement of an order under section 3 of this Act applying Part 1 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'. This is the section that the Supreme Court has construed as applicable to the registration of any foreign judgment pending the commencement of a ministerial order.

Several authors have criticized the Court's interpretation of section 10(a) of the 1961 Act. According to Olawoyin, section 10(a) is a 'saving provision that takes effect only after an Order has in fact been made pursuant to section 3 by the Justice Minister'.⁴¹ Olaniyan also states that 'the problem with this construction is that it defeats the entire purpose of insisting on a ministerial order if the judgment of any foreign country could still be registered under the Act before the ministerial order is made'.⁴² He submits that imprecision on the part of the drafters of the legislation might have contributed to the courts' confusion. He compares the provision with that of Singapore⁴³ where it is explicitly stated that the section is to apply to judgments rendered by a Commonwealth country to which the Act has been extended before the effective date of a ministerial order as at the time of registration. The implication will then be that, although the Act has been extended to a Commonwealth country, judgments made before the effective date of the order can still be registered within 12 months as provided under the 1922 Act or any such time extended by the court.

In 2007, a year after its decision in the *Marine* case, a similar issue came before the Supreme Court for determination in *Witt & Busch Ltd v. Dale Power System Plc.*⁴⁴ This time around, an English judgment was registered within the stipulated time under the 1922 Act but in foreign currency. While the 1922 Act allows judgment registration in foreign currency, it is prohibited under the 1961 Act. The Court was called upon again to determine which law applies to registration of judgments. The Supreme Court confirmed that what it decided in the *Macaulay* case was that both Acts applied to English judgments. While the 1922 Act ordinarily applies, the 1961 Act applies to foreign judgments pending the ministerial order. Hence, the provision of the 1961 Act prohibiting registration of foreign judgments in foreign currency does not affect the English judgment.

40 Part 1 covers the provisions on registration, the limitation period and the defences.

41 Olawoyin 2014, p. 140 (*supra* note 23).

42 Olaniyan 2014, p. 83 (*supra* note 29).

43 The text of section 10(b) of the Singaporean version states thus: 'the fact that a judgment was given before the coming into operation of the order did not prevent it from being a judgment to which Part I applies, but the time limited for the registration of a judgment was, in the case of the judgment so given, 12 months from the date of judgment or such longer period as may be allowed by the High Court', see Reciprocal Enforcement of Foreign Judgments Act (Chapter 265). <http://statutes.agc.gov.sg> (accessed 25 November 2016).

44 (2007) LPELR-3499(SC).

In *Vab Petroleum Inc v. Mr. Mike Momah*,⁴⁵ the registering court registered an English judgment under section 4 of the 1961 Act twenty-five months after the judgment was delivered. The Supreme Court set aside the registration affirming that foreign judgments could only be registered within 12 months as provided by the 1922 Act and section 10(a) of the 1961 Act for other countries, provisionally.

The alternative reference to section 10 of the 1961 Act seems to have been becoming liberalized gradually since the decision of the Supreme Court in the *Macaulay* case. An example can be seen in *Teleglobe America, Inc v. 21st Century Technologies Limited*,⁴⁶ where the first non-Commonwealth judgment was successfully registered and enforced in Nigeria. In this case, the Court of Appeal set aside the refusal of the Lagos High Court to register a judgment from the United States' Circuit Court of Fairfax County, Virginia. It exclusively applied the 1961 Act to determine a variety of issues surrounding the registration of the judgment and concluded that by virtue of section 10 of the Act, the judgment was registrable since the application was filed within 12 months. This is an expected result. Since the Court cannot apply the 1922 Act to the United States, it has to take recourse to the 1961 Act to address other issues arising from the case.⁴⁷

In *Catco Corporation Organised v. African Reinsurance Corporation*,⁴⁸ The Lagos High Court registered a Liberian Civil Law Court judgment under section 10(a) of the 1961 Act. The Court of Appeal allowed the registration under that section but only set aside the judgment for lack of service and personal jurisdiction over the judgment debtor. Similarly, in *Kerian Ikpara Obasi v. Mikson Establishment Industries Ltd*,⁴⁹ the Supreme Court approved the registration of a judgment from the Niger Republic under the same section. The United States, Liberia and the Niger Republic are all non-reciprocating States and their judgments have received favourable treatment under section 10(a) of the 1961 Act.

The aggregation of the opinions of the Supreme Court appears to have settled that the 1922 Act applies to English judgments and other countries to which it has been extended. Judgments from other States can be registered under section 10(a) of the 1961 Act, provided that such judgments are brought within 12 months or such time as extended by the registering court. The proper step for judgment creditors from non-reciprocating States seeking to enforce foreign judgments in Nigeria is to bring the application for registration of the foreign judgment under section 10(a) of the 1961 Act and if such an application falls outside the time limits, to apply for an extension to enforce the judgment. The Nigerian courts will always grant an extension to register a foreign judgment, provided that the applicant states good reasons for the delay.⁵⁰

45 (2013) LPELR-19770(SC).

46 (2008) LPELR-5006(CA).

47 E.g. jurisdiction and service.

48 [2010] All FWLR 677. This position is further strengthened by the recent Supreme Court decision in *Kerian Ikpara Obasi v. Mikson Establishment Industries Ltd* as the apex court also applied the provisions of the 1961 Act to determine whether the judgment debtor has discharged the onus on him to have the judgment from the Niger Republic set aside. See also *Idisi & Anor v. Bircham* (2013) 12 CLRN 201 at 218.

49 [2016] All FWLR 811.

50 *Ramon v. Jinadu* (1996) 5 NWLR (Pt 39) 102; *Catco Corporation* (*supra* note 48) at 696.

Precedents are a key feature of Nigerian law. The lower courts are expected to follow the decisions of the Supreme Court even if such decisions are reached *per incuriam*.⁵¹ The position of the Supreme Court as presented above will probably remain in force for some time due to the conservative attitude of the Court. Unless a grave miscarriage of justice is seen, the Supreme Court will not overturn its decisions.⁵² In fact, in *Witt Busch Ltd*,⁵³ the Supreme Court was invited to overrule its earlier decisions in *Macaulay* and subsequent cases but the Court declined because it could not see a miscarriage of justice.

While other writers⁵⁴ are of the opinion that the Supreme Court was wrong to have invoked section 10(a) of the 1961 Act as an alternative reference, I argue that the Courts are pursuing a pragmatic approach by enforcing foreign judgments under any of the two Acts. The Supreme Court cannot be ignorant of what a reciprocal regime means and it has demonstrated it by insisting that Part I of the 1961 Act remains inchoate until the ministerial order 'breathes life' into it. Assuming the approach stemmed from an erroneous interpretation of section 10 of the 1961 Act (which is a debatable point⁵⁵), the apparent error has been overlooked in favour of a more pragmatic approach of giving effect to foreign judgments provided a judgment creditor complies with the statutory requirements. *Teleglobe America Inc*, *Catco Corporation* and *Kerian Ikpara Obasi* merely brought out the practical implication of the pragmatic approach supposedly established by the Supreme Court in previous cases. Precedents dictate that it is against public policy for anyone to be sued twice on the same subject matter.⁵⁶ Contrary to what Gbenga Bamodu respectfully calls unnecessary judicial pragmatism, it is opined that this judicial pragmatism should rather be applauded as it brings Nigeria in line with the emerging trend of liberalization of judgment recognition and enforcement.⁵⁷

51 *Kerian Ikpara Obasi v. Mikson Establishment Industries Ltd* [2016] All FWLR 811 at 838.

52 *Roseek v. African Continental Bank Ltd* (1993) 8 NWLR (Pt 312) 382.

53 *Witt & Busch Ltd v. Dale Power System Plc* (*supra* note 44).

54 Olaniyan 2014 (*supra* note 29), Olawoyin 2014 (*supra* note 23), Bamodu 2012 (*supra* note 32).

55 First, the use of 'notwithstanding' to introduce the section means that the section supersedes other provisions of the Act including section 3 which requires a ministerial order to activate Part I of the Act. Secondly, the emphasis being placed on 'commencement of an Order' has no practical purpose to be achieved because if eventually the order is made, an applicant has six years to register a judgment. So what purpose will 12 months serve when upon commencement of the order, he has a six-year period to register his judgment. It may only be sensible where the period between making an order and commencement is more than six years, which can rarely happen.

56 *Yakubu v. Ajaokuta Steel Company Limited & Anor* (2009) LPELR-8864(CA).

57 There is no gainsaying that many countries are now relaxing the restrictive approach to foreign judgment recognition and enforcement. For discussions on this development, see Bélih Elbalti, 'Spontaneous Harmonization and the Liberalization of the Recognition and Enforcement of Foreign Judgments', *Japanese Yearbook of Private International Law* (16) 2014, p. 264.

2.2.2 Meaning of judgments under both Acts

Judgment is defined under the 1922 Act as any judgment or order given in a civil or arbitration proceeding whereby a sum of money is payable.⁵⁸ This definition is a codification of the characterization of foreign judgment as a debt under common law.⁵⁹ The 1961 Act also defines judgments in the same way but expands the scope to include judgments or orders given as compensation in a criminal proceeding.⁶⁰ Hence, freezing orders, anti-suit injunctions and other non-money orders are not eligible for registration under the Acts. Rather, Nigerian courts may re-issue those orders if an application is presented to the court exhibiting an order already obtained from a foreign court. This was done in *International Finance Corporation v. DSNL Offshore Limited & Ors*,⁶¹ in relation to an English court's freezing order.

2.2.3 Grounds for setting aside registration

The registration of judgments is governed by section 3 and 4 of the 1922 and 1961 Act respectively. While registration is discretionary under the 1922 Act, it is mandatory under the 1961 Act, provided that certain requirements are met. The provisions of the two Acts are largely similar, except that the 1961 Act elaborates on some of the requirements briefly stated under the 1922 Act. The grounds that a judgment debtor may rely upon to set aside a foreign judgment are: lack of jurisdiction, non-service, fraud and public policy.

The statutory regime codifies the common law principles. A foreign court has jurisdiction if a judgment debtor is resident in the foreign country as of the time of instituting the action against him and if he voluntarily submits to the jurisdiction of the foreign court either by unconditional appearance or by contract.⁶² Corporate bodies must be sued where they have their principal place of business or the place where they maintain a branch, provided that the suit is in connection with the activity of that branch.⁶³

The Nigerian Courts have applied the provisions of the statutes strictly. For instance, an English judgment was set aside in *Grosvenor Casinos Ltd v. Ghassan Halaoui*⁶⁴ because the judgment debtor was not resident in England. However, where evidence exists that the judgment debtor maintains an address within the jurisdiction of the rendering court, the court may use that as evidence of residence and uphold the foreign court's exercise of jurisdiction, as shown by *VAB Petroleum v. Momah*.⁶⁵ In the absence of a choice of court agreement,⁶⁶ foreign claimants must

58 Section 2(1).

59 The common law has remained unchanged until today since the rule was applied in *Sadler v. Robins* (1808) 1 Camp 253. It has generally been consistently applied in the Commonwealth except in Canada where it is now displaced according to its Supreme Court decision in *Pro Swing Inc v. Elta Golf Inc* (2006) SCC 52.

60 Section 2(1).

61 (2008) All FWLR (Pt 403) 1264.

62 Section 6(2)(a) 1961 Act.

63 Ibid.

64 (2009) LPELR-1340(SC).

65 (2013) LPELR-19770(SC).

66 Thus, the court refused to entertain the ground of jurisdiction in *Conoil Plc v. Vitol SA* (2012) 2 NWLR Pt 1283, p. 50 because parties had a choice of court agreement. This can be extended to cases where a judgment

be wary of suing Nigerians or Nigerian companies abroad if they do not maintain any residence in that foreign country.⁶⁷ The Supreme Court acknowledges the concept of corporate personality and may be prepared to adopt the approach in *Adams v. Cape Industries Plc*,⁶⁸ by holding, that a foreign court cannot exercise jurisdiction over a parent company from the activities of its subsidiary located within its jurisdiction except where strong evidence shows that the parent company controls and directs the affairs of the subsidiary.⁶⁹

The law of the foreign court governs the manner and adequacy of service of a court's processes.⁷⁰ Litigants are required to raise such issues before the foreign court and not in Nigeria. Where they are raised and decided by the foreign court, the issues become *res judicata* and the Nigerian courts will not allow a litigant to reopen them. In the *Teleglobe* case, the Respondent asked the Lagos High Court to set aside a US judgment claiming that service was effected on the company through an unofficial channel contrary to Nigerian law. The issues had earlier been raised at the trial in the US where the court ruled that the service was a good one under US law. The Court of Appeal held that the issue of service having already been determined by a US court, could not be reopened in Nigeria.⁷¹ The registration was therefore permitted. In *Shona-Jason Nigeria Limited v. Omega Air Limited*,⁷² an English judgment was set aside because of the Respondent's unchallenged affidavit, which stated that he was not served with the processes of the foreign court. In *Catco Corporation*,⁷³ a Liberian judgment was also set aside because the judgment debtor who was a non-resident defendant was served through substituted means by publication in the national dailies in Liberia.

debtor chose litigation in the foreign court. In *Crescent Africa (Ghana) Ltd v. Bronwen Energy Trading Ltd* (2010) 1 CLRN 297, the Lagos High Court refused Brown Energy's defence of lack of jurisdiction of the Ghanaian court over it because the company filed the action against Crescent Africa in that country. Judgment debtors who unconditionally defended the foreign proceedings were also not allowed to raise the issue of the jurisdiction of the foreign court. See *Union Petroleum Services. Ltd v. Petredec Limited* (2014) 2 CLRN 104 and *Access Bank v. Akingbola* (2015) 5 CLRN.

67 Taking a cue from the Nigerian Companies and Allied Matters Act 2004 and other judicial authorities, a company is presumed to be resident at its principal place of business, i.e. its registered address or its corporate headquarters, not a branch or liaison office.

68 (1990) 2 WLR 657.

69 *Kanu Sons & Co. Ltd v. First Bank of Nig. PLC* (2006) 5 SC (Pt 111) 80 at 91; *Marina Nominees Ltd v. Federal Board of Inland Revenue* (1986) 2 NWLR (Pt 20) 61.

70 Cf *Ramon v. Jinadu* (*supra* note 50) which holds a contrary view that service is governed by Nigerian law. This decision could be said to have been replaced by the latest decision of the same Court of Appeal in the *Teleglobe* case. It must however be noted that where the judgment debtor failed to appear, he may be allowed to raise the issue of service.

71 This is different from the approach in some other jurisdictions. For instance, the Malaysian court in *Ng An Chin v. Panin International Credit (S) Pte Ltd* (2003) 3 MLJ rejected the view that foreign law determines validity of service. The Court reasoned that to accept that invitation will amount to violation of Malaysian sovereignty in that instance where the Singaporean law allows private service against the required official channel under Malaysian law.

72 (2005) LPELR-6110(CA). See also *Ramon v. Jinadu* (*supra* note 50) for a similar decision.

73 *Catco Corporation* (*supra* note 48).

Fraud is a common reason for setting aside foreign judgments. However, the Nigerian courts adopt a different approach from the traditional common law position.⁷⁴ The courts ordinarily presume foreign judgments to be valid and inviolable. A judgment debtor has a herculean task to set aside a foreign judgment for fraud. Fraud is viewed as a criminal allegation requiring proof beyond reasonable doubt. Mere allegation does not entitle a court to review or set aside a foreign judgment. The Court of Appeal stressed this point in *Idisi & Anor v. Bircham*⁷⁵ and the *Crescent Africa (Ghana) Ltd* case⁷⁶ that a judgment debtor has to present convincing proof of the existence of fraud and how it may lead to a miscarriage of justice.

Public policy is another ground commonly used by States to restrict the enforcement of foreign judgments that may violate fundamental values, the public good and the morality of the State. Nigerian courts have advocated a restrictive approach to the usage of public policy as a ground for the rejection of foreign judgments. The Nigerian jurist, Justice Eso in *Sonnar (Nig.) Ltd v. PMS Nordwind* holds that 'it is dangerous for a court to base its decision mainly on public policy, which indeed would be another means of avoiding the rules, laws and procedures which govern a matter'.⁷⁷ *Ramon v. Jinadu*⁷⁸ is the only reported case where a foreign judgment was set aside on the grounds of public policy. The court ruled that the underlying cause of action was an illegal contract under the Exchange Control Act and the court could not aid parties in the furtherance of illegality.⁷⁹

The case of *Access Bank Plc v. Akingbola*⁸⁰ also presents issues that are close to a public policy defence but the court set aside the registration of the English £1.3b judgment without making reference to public policy in arriving at its decision.⁸¹ The Respondent challenged the registration of the judgment on the ground that the substratum of the suit is the (mis)management of a company registered under the Nigerian Companies Act and by section 251 of the Nigerian Constitution, so the Federal High Court of Nigeria had exclusive jurisdiction over the case. The second ground was that he was disallowed appeal in England, which was contrary to section 241 of the Nigerian Constitution, which grants an unconditional right of appeal against final judgments. Lastly, he argued that certain testimonies admitted by the English court were hearsay evidence and were inadmissible under Nigerian law. The court set aside the judgment on the basis of the hearsay evidence and denial of right of appeal as both meant that the judgment debtor was not given a fair hearing in England. At present, the matter is pending at the

74 *Abouloff v. Oppenheimer* (1882) 10 QBD 295 is an authority for the common law position that allows a judgment debtor to move the court to re-examine a foreign judgment on allegation of fraud. It has almost become an omnibus ground to attack foreign judgments under common law. See Tanya J. Monestier, 'Foreign Judgments at Common Law: Rethinking the Enforcement Rules', *Dalhousie Law Journal* (28) 2005, p. 117.

75 *Idisi & Anor v. Bircham* (*supra* note 48). See also *Ramon v. Jinadu* (*supra* note 50) at 110.

76 *Crescent Africa (Ghana) Ltd v. Bronwen Energy Trading Ltd* (*supra* note 66).

77 (1987) LPELR-3494(SC).

78 *Ramon v. Jinadu* (*supra* note 50).

79 The court was of the view that the parties are Nigerian and the essence of the Act was to prohibit foreign exchange contract by Nigerians both within and outside Nigeria without seeking the approval of the government.

80 *Access Bank v. Akingbola* (*supra* note 66).

81 The application was initially filed at the Lagos State High Court but refused because the cause of action borders on the management of companies and only the Federal High Court has jurisdiction under section 251 of the Constitution.

Court of Appeal. The response of the appellate courts will shed more light on the position of Nigerian courts on the effect of differences in Nigerian and foreign procedural justice laws on foreign judgments.

The last ground that can be found in the 1922 Act but not in the 1961 Act is 'justice and convenience'. The provision was originally meant to reserve some residual powers in the registering court to refuse the registration of foreign judgments in any deserving case. Obviously, the question of when it is just and convenient is a subjective one and very difficult to define. It is rarely used by the Nigerian courts and can therefore be seen as limited in application. The registering court unsuccessfully attempted to set aside a registered judgment in *International Finance Corporation v. DSNL Offshore Limited & Ors*⁸² under the pretext that it was not just and convenient to register the English judgment because there was a pending case between the parties in a Nigerian court. The decision was set aside on appeal. The appellate court reasoned that once a judgment creditor has complied with the requirement of registration, the court must order the registration of the judgment.

By and large, what is evident from the practice of the Nigerian courts is a liberal and pragmatic approach to the enforcement of foreign judgments. The courts recognize judicial economy, the need to end litigation, as well as the need to allow successful litigants to reap the fruits of their labour as key factors. The courts have generally exercised restraint by construing the statutory grounds strictly against judgment debtors. This may account for why foreign judgments have rarely been set aside on account of fraud, inconvenience and public policy despite attempts to do so. The setting aside of only a few registrations were due to non-compliance with statutory provisions regarding time limit for registration, jurisdiction and non-service.

3. Conclusions

This article has assessed the Nigerian law and practice of judgment recognition and enforcement in the last decade. It is interesting to note that the law in this area is an evolving one because the majority of reported cases came up in this period of review. The courts have been generous towards the enforcement of foreign judgments. The common law action on judgment is preserved if, for whatever reason, a judgment creditor cannot get a foreign judgment registered either due to time constraints or other issues. However, this is a rough route as the judgment creditor may be confronted with excessive delay and high litigation costs.

Going by the two reciprocal statutes, the legislative intent is to restrict the enforcement of foreign judgments to countries that have reciprocal treatment for Nigerian judgments. The precedents, however, suggest otherwise. The courts are not entirely moved by the reciprocal approach adopted by the legislature. Such could not be said of the doctrine of comity either. The cases suggest that the courts are swayed by pragmatic reasons of respecting foreign judgments, ensuring access to justice, management of scarce judicial resources, justice for litigants and the need to abide by statutory rules. Admittedly, the courts do not follow this approach in definite and coherent terms, which shows that this is an area the courts need to clarify, particularly with regard to legislative intervention.

It is desirable that the statutes are aligned with the precedents. This will aid certainty, which promotes international trade and commerce and will assist foreign courts to form a correct

82 *International Finance Corporation v. DSNL Offshore Limited & Ors* (supra note 61).

opinion on judgments from the Nigerian courts. This, in turn, will cause Nigerian judgments to be received more favourably in foreign legal systems. At the present time, some courts rely on statute books to determine reciprocal treatment of their judgments.⁸³ Legal practitioners will also benefit from this as they can offer definite opinions as to the position of Nigerian law on the recognition and enforcement of foreign judgments.

83 For instance, Karim El Chazli reports that Egyptian courts, and of course many systems in North Africa, consider statute books (legislative reciprocity) to determine reciprocity. See Karim El Chazli, 'Recognition and Enforcement of Foreign Decisions in Egypt', *Yearbook of Private International Law* (15) 2013/2014, p. 401; for similar situation in Turkey see Seyda Sural and Zeynep D. Tarman, 'Recognition and Enforcement of Foreign Court Decisions in Turkey', *Yearbook of Private International Law* (15) 2013/2014, p. 496.