

**ATTITUDE OF NIGERIAN COURTS TO THE ENFORCEMENT OF FOREIGN
JUDGMENTS: AN EXAMINATION OF SELECTED DECISIONS OF THE COURT OF
APPEAL AND THE SUPREME COURT**

Abstract

The statutes for registering and enforcing foreign judgments in Nigeria are the Foreign Judgment (Reciprocal Enforcement) Act, Cap 152 Laws of the Federation of Nigeria 1990 and the Reciprocal Enforcement Ordinance of 1958. This work examined the above using relevant judicial authorities of both the appellate and the apex courts in Nigeria. It examined recent case law and found that while the former is inchoate, the provision of the latter is more or less a codification of the English common law and this works hardship for modern international commercial transactions. The work concluded that although the Nigerian courts rely on the above statutes, the present state of the law is an open invitation to fraud and improper conduct and, therefore, in serious need of reform. The study therefore called on the Nigerian Minister of Justice to do the needful so that the position of the law as it pertains to the enforcement of foreign judgment in Nigeria will be well settled and devoid of ambiguity.

Keywords: Foreign Judgment, Enforcement, Registration, Recognition, Commerce.

1. Introduction

A remarkable incentive for international trade and commerce is the ability to enforce a judgment obtained in one country in the courts of another. This incentive is largely made possible by private international law rules which permit judgments of one country to be recognized and enforced in other countries. The judgment of one state's court has no force of law by itself in another state.¹ Consequently, municipal rules have been developed in the realm of private international law permitting judgments of one country to be recognized and enforced in other countries.² In many jurisdictions, the recognition and enforcement of foreign judgment is governed by local domestic law and the principles of comity, reciprocity and *res judicata*. In Nigeria, two statutory regimes govern the enforcement of final monetary judgments obtained against a person in a foreign court in Nigeria. They are, the Reciprocal Enforcement of Judgment Act, 1922, Cap. 175, Laws of the Federation of Nigeria and Lagos, 1958 and the Foreign Judgment Reciprocal Enforcement Act, 1961, Cap. 152, Laws of the Federation of Nigeria, 1990. This work examines eleven appellate and apex courts decisions on the enforcement of foreign judgments in Nigeria and concludes with some recommendations for reform.

2. Statutory Regimes for Enforcement of Foreign Judgments in Nigeria

There are two statutes regulating enforcement of foreign judgments in Nigeria they are the Reciprocal Enforcement of Foreign Judgments Ordinance, Cap 175, Laws of the Federation of Nigeria and Lagos, 1958³ and the Foreign Judgments (Reciprocal Enforcement) Act, Cap 152, Laws of the Federation of

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¹ I. O. Omoruyi, 'Enforcing Foreign Judgment in Nigeria: An Appraisal' (2006) 1 No. 1 *KNUSTLJ* 1. See also M. Ralf, *Recognition and Enforcement of Foreign Judgments* (Heidelberg,; Oxford University Press, 2009) p. 1

² A. A. Olawoyin, 'Enforcement of Foreign Judgments in Nigeria: Statutory Dualism and Disharmony of Laws,' (2014) 10 No. 1 *JPIL* 130.

³ Enacted in 1922 as L.N. 8, 1922 and herein after referred to as "the 1958 Ordinance"

Nigeria, 1990.⁴ The 1958 Ordinance extends the reciprocity treatment to the judgments from the courts in Britain and other British Commonwealth countries while the 1990 Act specifically empowers the Minister of Justice to extend the reciprocal treatment to any foreign country with substantial reciprocity of treatment with respect to the enforcement of judgment.⁵ Unfortunately, this is yet to be done.⁶

In order for a foreign judgment to be enforced in Nigeria, it must be registered. The statute stipulates the kind of Judgments that are registrable. In order for a foreign judgment to be enforceable in Nigeria, it must be pronounced by a superior court of the country of the original court. This applies to both civil proceedings (including awards in arbitration proceedings) and judgments given in criminal proceedings for the payment of money in respect of compensation or damages to an injured party.⁷

In *Tulip Nigeria Limited v. Noleggioe Transport Maritime S.A.S.*⁸ the Court of Appeal held that by the provisions of section 2(1) of the Foreign Judgment (Reciprocal Enforcement) Act 1990, 'judgment' means a judgment or an 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. However, for an award to fall within the contemplation of the said section, the court held that such an award must be elevated to the status of a judgment of the High Court that is, the party seeking to enforce the judgment, the respondent in this case, must seek leave of the high Court of England to enforce the award in the same manner as a judgment

The court further stated that an arbitral award made in England can only be elevated to the status of a judgment if the party in whose favour the award is made had applied before the English High Court for leave to enforce the arbitral award in the same manner as a judgment and once the high court in England grants such an order, it then becomes a judgment of the English High court. It is only then that the Reciprocal Enforcement Ordinance of 1958 and the Foreign Judgment (Reciprocal Enforcement) Act 1990, will apply, that in the instant case, having regards to the fact that the arbitral award had not become enforceable as a judgment of court, the provisions of the Reciprocal Enforcement Ordinance of 1958 and the Foreign Judgment (Reciprocal Enforcement) Act 1990 were not applicable to the case and the trial court rightly invoked the provision of section 8(1)(d) of the Limitation Law of Lagos State to resolve the issue as to whether the action to enforce arbitral award was statute barred or not. Therefore, 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 may 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.⁹

⁴ Enacted in 1961 as L.N. 56, 1961 and hereinafter referred to as "the 1990 Act"

⁵ Y. Olukolu, 'The Enforcement of Foreign Judgments in Nigeria: Scope and Conflict of Laws Questions' (2015) 23 No. 1 *Afr. J. Int'l & Comp. L.* 129,

⁶ The difficulties occasioned by this omission will be discussed later in this work.

⁷ G. Omoaka, Legal Regime For The Enforcement of Foreign Judgments in Nigeria: An Overview, available at <http://ng.vlex.com/vid/regime-enforcement-judgment>, accessed 27, October, 2016.

⁸ [2011] 4 NWLR (PT 1237) 254 (CA)

⁹ P. Wallace, 'Enforcement of Foreign Judgment under Nigerian Law,' available at <http://www.elexica.com/en/legal-topics/disputes-resolution-commercial/25-enforcement-of-foreign-judgments-under-nigerian-law>, accessed 27 October, 2016.

Section 3(2) (b) of the 1990 Act provides that for a foreign judgment to qualify for registration, the foreign judgment must be a money judgment. The judgment must be for a sum certain. A sum is sufficiently certain for this purpose if it can be ascertained by a simple arithmetical process.¹⁰ In addition, the judgment must be final and conclusive as between the parties thereto.¹¹ In other words, it must settle the rights and liabilities of the parties so as to be *res judicata* in the country in which it was given.¹² Thus interim or interlocutory and default judgments that do not finally and conclusively determine the rights and liabilities of the parties cannot be registered.¹³ In the same vein, a judgment which is capable of being varied or rescinded by the court that gave it cannot to be registered. However, a judgment shall be deemed to be final and conclusive despite the fact that an appeal is pending against it or that it may still be subject to an appeal in the foreign country in which it was pronounced. This is provided for in Section 3(3) of the 1990 Act.¹⁴

Both the 1958 Ordinance and the 1990 Act stipulate the time period within which a foreign judgment may be registered in Nigeria. Section 3(1) of the 1958 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. Whereas, Section 4(1) of the 1990 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. Perhaps this is the most controversial provision under the statute because of the attention it has received judicially and other wise. Moreover, it has brought to the fore the challenges inherent in the dualist nature of statutory enforcement of foreign judgment in Nigeria¹⁵

Fortunately, both the appellate and the apex courts have on several occasions held that the applicable law is section 3(1) of the 1958 Ordinance and section 10 of the 1990 Act. For in the absence of an order of the Minister of the Federation directing otherwise as required by section 3 of the 1990 Act, section 4 of the same cannot be enforced. This was the decision of the court in *Andrew Mark Macaulay v. Raiffeisen Zentral Bank Osterreich Akiengesell Schaft (RZB) of Austria*¹⁶ and more recently in *Vab Petroleum Inc v Mr Mike Momah*.¹⁷ In *Maculay v R. Z. B Austria*, the issue was the time within which to register an English judgment. The Supreme Court held that the applicable law was the 1958 Ordinance and that the judgment ought to have been registered within a period of twelve months.

¹⁰ G. Omoaka (n 7)

¹¹ s. 3(2)(a)

¹² P. Wallace (n 9)

¹³ Ibid

¹⁴ See the case of *21st Century Technologies Ltd v. Teleglobe America, Inc.* [2013] 3 NWLR 99

¹⁵ For a detailed discussion of the problems presented by the dualist nature of legal regime for the enforcement of foreign judgment in Nigeria, see A. A. Olawoyin, 'Enforcement of Foreign Judgments in Nigeria: Statutory Dualism and Disharmony of Laws,' 10 No. 1(2014) *JPI L* 130.

¹⁶ [2003] 18 NWLR (PT 852) 282 (SC) hereinafter to be called *Maculay v R. Z. B Austria*

¹⁷ [2013] 14 NWLR (Pt 1374) 284 (HC & SC)

Unfortunately, however, this decision has received a lot of attention. To some, what this decision means is that the applicable law on the enforcement of foreign judgment in Nigeria is the 1958 ordinance.¹⁸ Olukolu too seems to be of this view. He stated that it would appear that only the 1958 Ordinance is presently the extant enabling law on this subject in Nigeria, apart from the international Conventions, since the 1990 Act¹⁹ is inchoate as the Nigerian Minister of Justice has not exercised its power, since it promulgation to extend the application of the law with regards to registration and enforcement of foreign judgments of superior courts to any foreign country.²⁰ This though is not the case for in the same decision, the court 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 judgment in question was 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.

Also in *Vab Petroleum Inc v Mr Mike Momah* supra, the issue here was the time span within which to get the foreign judgment registered by the registering High Court and the apex court, a decade after the decision in *Macaulay*, held thus: ‘...This court in the case of *Macaulay v. R.Z.B. Austria* (2003) 18 NWLR (Pt.852) 282 at pp. 298H - 299 A - B, per Kalgo, JSC observed 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 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. 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 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... So here we are! This court has already laid a precedent. ... All I have seen and as relied upon by the parties and the Court below is that the Ruling of the Court below was delivered on 14/12/93. This date far exceeded the time limit provided by section 10(a) of the 1990 Act.

¹⁸ See W. Inam, ‘Nigeria: Supreme Court Creates Pitfalls on Enforcement of Foreign Judgments in Nigeria’ available at <http://www.mondaq.com/nigeria/x/31865/supreme+court+creates+pitfalls+on+enforcement+of+foreign+judgment+in+nigeria>, accessed 27 October 2016, and G. Omoaka, ‘Legal Regime For The Enforcement of Foreign Judgments in Nigeria: An Overview’ available at <http://ng.vlex.com/vid/regime-enforcement-judgment>, accessed 27 October 2016.

¹⁹ Which he referred to as the 2004 Act by virtue of the fact that it is now part of the Laws of the Federation of Nigeria, 2004

²⁰ Y. Olukolu (n 5) 131.

As noted by Adewale A. Olawoyin,²¹ the apex court in this case decided both the main appeal and the cross-appeal solely on the basis of the 1990 Act. Therefore, it would be wrong to say that the applicable law to the enforcement of foreign judgment in Nigeria is now the 1958 Ordinance. The correct position is as stated in the recent appellants court decision of *Kabo Air Ltd v. The O'Corporation Ltd*,²² that the applicable law is the 1958 Ordinance and the 1990 Act. Ikyegh, J.C.A, stated thus:

I agree with the respondent that the foreign judgment is registrable in Nigeria. That the ordinance is extant and complements the Act on the registration/recognition and enforcement of foreign judgments has been firmly settled by the Supreme Court in the case of *Marine and General Assurance Co. Plc. v. Overseas Union Insurance Ltd. and Ors.* (2006) 4 NWLR (pt. 971) 622 at 641 - 642 thus - 'The law applicable to the proceedings for the registration of foreign judgment in Nigeria therefore is the Reciprocal Enforcement of Judgments Act, 1922, Cap.175, Laws of the Federation of Nigeria and Lagos, 1958 and the Foreign Judgment (Reciprocal Enforcement) Act, 1961, Cap 152, Laws of the Federation of Nigeria 1990. See also the Supreme Court cases of *Witt and Bush Ltd. v. Dale Power Systems Plc.* (supra) and *Macaulay v. R.Z.B.* (supra) cited by the respondent. I would conclude on these issues that the court below (Federal High Court) had the jurisdiction to register the foreign judgment from The Gambia which is a registrable judgment and can be so registered under the Ordinance and the Act taken together.

In the case of *Teleglobe America Inc. v 21st Century Tech Ltd*,²³ 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 Minister has not made any order extending the time within which to bring such applications.²⁴

However, Olawoyin has criticized the apex court's decision in *Vab Petroleum Inc* and *Macaulay*. According to him, this approach will only serve to fan the embers of confusion and will have the effect of continuing to engender the uncertainty and inconsistency that seems to pervade this area of Nigerian jurisprudence. He is of the opinion that the case could have been decided with the same result by applying section 3 of the 1958 Ordinance, that section 10(a) was not intended to have general or 'interim' application where there is no Order in existence pursuant to section 3 that Section 10 only applies to save any judgments given before the commencement of an Order. That in essence, section 10 is a saving provision that kicks in only after an Order has in fact been made pursuant to section 3 by the Minister of Justice and not a legally effective provision on its own. Whereas in *Dale Power Systems Plc. v. Witt & Busch Ltd*²⁵ the registration of the judgment of the English High Court was set aside because it was registered under the 1958 Ordinance instead of the 1990 Act. On appeal, the court of Appeal held that the 1958 Ordinance has not ceased to exist that there is an implied saving of the 1958 Ordinance by the 1990 Act.²⁶ From the above, Olawoyin's desire for certainty and consistency is understandable, it is however imperative to state that the deficiencies of the 1958 Ordinance are such

21 Y. Olawoyin (n 2) 139.

22 [2014] LPELR 23616 (CA)

23 [2008]17 NWLR (Pt.1115) (CA)

24 See also *Marine & General Assurance Company Plc v. Overseas Union Insurance Limited & 7 Ors* [2006] 4 NWLR (PT 971) 641 (SC)

25 [2001] 8 NWLR 698 (CA)

26 See also G. Bamodu, 'The Enforcement of Foreign Money Judgments in Nigeria: A case of Unnecessary Judicial Pragmatism?' (2012) '12 No. 1 *OUCLJ* 1-31 and H. A, 'The Commonwealth Model and Conundrum in the Enforcement of Foreign Judgment Regime in Nigeria' (2014) 40 No. 1 *CLB* 76-94

that makes its use unattractive to present day international commercial litigations. Interestingly, Olawoyin, has identified some of these deficiencies. In addition to the deficiencies identified by him, it is argued that the 1958 Ordinance is more of a codification of the common law rules²⁷ and therefore inimical to the interest of present day trade and commerce. As noted by La Forest J of the Canadian Supreme Court, the world has changed since the development of the old common law rules in the 19th century England. Greater comity is required in an era where the business community operates in a world economy and where accommodating the flow of wealth, skill and people across state lines has become imperative.²⁸ We therefore agree with Oguntade JSC in *Grosvenor Casinos Ltd v. Ghassan Halaou*,²⁹ that there is an urgent need to reform the Nigerian law on the enforcement of foreign Judgment. It is this reform and not mere consistency in the application of the 1958 Ordinance that should be advocated for. The statutes also provide that upon the registration of a foreign judgment, it acquires the same force and effect as the original judgment and proceedings may be taken on it. The judgment sum carries interest, and the registering court has the same control over execution, as if the registered judgment had been one originally given by the registering court and entered on the date of registration.

In *Adwork limited v. Nigerian Airways Limited*,³⁰ the appellant registered a judgment given in its favour by the High Court of Lagos State in the United Kingdom for the purpose of executing it there. The execution process commenced in the United Kingdom and the properties of the defendant were attached upon a writ of *fifa* issued at the instanced of the appellant. In the course of the execution of the proceedings in the United Kingdom, both the appellant and the respondent reached a compromise as to the settlement of the judgment debt. The compromise was in some respects a departure from the tenor of the judgment of the Lagos High Court. As part of the compromise, they agreed to refer to an arbitrator nominated by the President of the Law Society for the time being to arbitrate on any disagreement between them as to the rate of exchange on any relevant date arising in connection with a series of cheque in sterling resulting from conversion from Nigeria Naira at the rate prevailing on the date at which each cheque was made. There was a dispute and the parties referred the matter to an arbitrator. The arbitrator appointed by the President of the law society published an award which stipulated that a given sum be paid to the appellant by the respondent. Neither of the parties applied to the court to set aside the arbitral award. Some 9 months after the arbitral award was made, the respondent filed an application at the High Court of Lagos state to reverse the award by the arbitrator in the United Kingdom. The appellant filed a notice of preliminary objection to the said application contending in the main that the arbitrator having delivered the arbitral award and in the absence of an appeal or an application to set it aside, was liable to be enforced as binding between the parties. The Lagos High Court after hearing the arguments however, granted the respondent's application.

Dissatisfied, with the ruling of the High Court, the appellant appealed to the Court of Appeal. The appellate court held unanimously allowing the appeal, that the original court which gave judgment does not lose its jurisdiction in relation to the execution process in the case just because the judgment has

²⁷ At common law, a foreign judgment will be enforced where the person against whom the judgment was obtained has done one of the following: (a) was present in the foreign jurisdiction when the proceedings commenced;(b) claimed or counterclaimed in the foreign proceedings; (c) submitted to those proceedings by voluntarily appearing in them and (d) agreed to submit to the jurisdiction of the foreign court. See Nicholas Greenwood, 'Rubin: Enforcement of US Judgments in England' available at <http://www.morganlewis.com/en/Rubin/EnforcementofUSjudgmentsinEngland> accessed 9 May, 2017.

²⁸ *Morguard Investment Limited v. De Savoye* [1990] 3 S. C. R. 1077 at 1098 (SCC) La Forest J. See also M. Koehnen and A. Klein, 'The Recognition and Enforcement of Foreign Judgment in Canada' p. 5, Being a paper presented at the International Bar Association Annual Conference held in Vancouver, Canada in 2010.

²⁹ [2009] 10 NWLR 309

³⁰ [2000] 2 NWLR (PT 645) 415 (CA)

been registered in a foreign country. But that once it is recognized that a registering court has the same power with respect to execution as the original court, it becomes important to monitor closely what the registering court is doing in relation to the execution of a particular registered judgment in order to ensure that there is no conflict in the exercise of powers between the registering court and the court which originally gave the judgment. That a registering court cannot sit on appeal over the judgment of a foreign court.

Also in *21st Century Technologies Ltd v. Teleglobe America*,³¹ The Court of Appeal examined the provisions of sections 3(2)(a), 3(3) and section 6(1)(a)&(b) of the Foreign Judgment (Reciprocal Enforcement) Act, 1990 and held (unanimously dismissing the appeal) that by the combined reading of section 3(2)(a) and 3(3) of the said Act, for a foreign judgment to be registered in Nigeria, it must be final and conclusive as between the parties thereto, that this is the case, even where the final judgment is the subject of an appeal, as it will still be a valid and registrable judgment under the Act. The court further held *per* Okoro, J.C.A. that the effect of registering a foreign judgment in a Nigerian court is for all intent and purposes to make the registered judgment a judgment of the Nigerian court. In this case, the court focused primarily on the effect of registering foreign judgment in Nigeria and when registration of a foreign judgment may be set aside and like we saw in the previous case, the provision of the Act is synonymous with what is obtainable at common law.

Another relevant provision in the statutes deals with the grounds on which an application for the registration of foreign judgment may be refused. 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 (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 (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.³²

The grounds for refusing to register a foreign judgment under the 1990 Act can be found in section 4(1)(a) and (b), (3), (4), (5) and (6).³³ While the provisions under the 1990 Act are quite straightforward, the same cannot be said of the 1958 Ordinance. In addition to it being more of codifications of the common law rules on the subject, that they are in dire need of reform is evident in some decisions that have been reached by them. For example, an 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

31 [2013] 3 NWLR 99 (CA)

32 The above is similar to what is obtainable at common law. See Paul A. Harshaw, 'Enforcement of Foreign Judgments in Bermuda' available at www.Canterburylaw.bm accessed 09-05-2017

33 For a detailed discussion of the above, see Onyia F. and Azikiwe U., 'The Realities of Enforcing Foreign Judgments in Nigeria, (2014) International Financial Law Review, available at www.iflr.com/article/3369241/the-realities-of-enforcing-foreign-judgments-in-nigeria/ accessed 09-05-2017, 6pm; Bamodu G., 'The Enforcement of Foreign Money Judgments in Nigeria: A case of Unnecessary Judicial Pragmatism?' 12 No.1 (2012) *Oxford University Commonwealth Law Journal* 1-31 and H. A. Olaniran, 'The Commonwealth Model and Conundrum in the Enforcement of Foreign Judgment Regime in Nigeria' (2014) 40 No. 1 *CLB* 76-94

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.³⁴

This was the case in the *Grosvenor Casinos Ltd v Ghassan Halaoui*.³⁵ Here, the respondent in 1993 issued a cheque in favour of the appellant, which cheque was drawn on a bank in the United Kingdom. The cheque was dishonoured. The respondent thereafter paid part of the amount on the dishonoured cheque, but did not pay the balance. The appellant instituted an action in England to recover the balance in 1999 when the respondent had already returned to Nigeria and served the processes on the respondent in Nigeria, at his business premises in Ibadan, Oyo state. The respondent neither entered appearance for nor defended the action. Judgment was eventually given in favour of the appellant. In an effort to execute the said judgment, the appellant filed an *ex parte* application at the High court of Oyo state, Ibadan praying that the judgment obtained in England be registered in November 1999. The trial court granted the application. The respondent subsequently filed an application at the same court to have the registration set aside. The trial court refused the application and noted that the only argument advanced by the respondent was that the service on him outside the jurisdiction of England was bad. The court held that the respondent having admitted the service should have gone to the venue to challenge the jurisdiction of the court and there was no evidence to prove lack of jurisdiction. The respondent's appeal to the Court of Appeal was allowed. Dissatisfied, the appellant appealed to the Supreme Court. The apex court considered section 3(1), (2) and (3) of the Reciprocal Enforcement Ordinance of 1958 and section 6 of the Foreign Judgments (Reciprocal Enforcement) Act 1990 and dismissed the appeal. The Supreme Court relied heavily on section 3(2) (b) in reaching this decision. The injustice occasioned by reliance on this section was not lost on the court. Oguntade JSC stated that continued reliance on this provision is inimical to international commercial transactions and an open invitation to fraud and improper conduct. In the same vein, Ogebe JSC stated: 'This is a case in which the respondent is using a loop-hole in the Nigerian Law to avoid his international obligation. The Attorney-General of the Federation should take urgent steps to update the law in line with modern trends.'³⁶

The judgment debtor similarly tried albeit unsuccessfully to avoid payment of a judgment debt in *Dale Power Systems Plc v. Witt & Busch Limited*,³⁷ in that case, the appellant obtained judgment against the respondent in England, in order to enforce the judgment in Nigeria, the appellant had it registered at the Ikeja High Court of Lagos state. The respondent had the registration set aside on the ground that the English court had no jurisdiction to entertain the suit and that the registration was against public policy. In determining the appeal, the Court of Appeal, Jos Division considered the provision of section 6 of the Foreign Judgments (Reciprocal Enforcement) Act, Cap 152, Laws of the Federation of Nigeria, 1990 and section 3(2) of the Reciprocal Enforcement of Judgment Ordinance, Cap 175, Laws of the Federation of Nigeria 1958 and unanimously allowed the appeal. The court held per Onnoghen, J.C.A., that by virtue of section 6(2)(a) of the Foreign Judgment (Reciprocal Enforcement) Act, the court of the country of the original court shall, subject to the provisions of subsection 3 of the section, be deemed to have jurisdiction in the case of a judgment given in an action *in personam* where the five listed conditions are satisfied, that however, any of the five conditions will accord jurisdiction to the foreign

³⁴ G. Omoaka (n 7)

³⁵ *Supra*

³⁶ See also R. F. Opong, *Private International Law in Commonwealth Africa* (Cambridge: Cambridge university Press, 2013) p. 374

³⁷ *Supra*

court. In other words, it is not the requirement of the law that all five conditions must co-exist to confer jurisdiction on the court.

On the principle guiding the setting aside of a registered judgment, it was held that by virtue of section 6(1)(a) of the Foreign Judgments (Reciprocal Enforcement) Act 1990, on application duly made by any party against whom a registered judgment may be enforced, the registered judgment shall be set aside if the registering court is satisfied that the court of the country of the original court had no jurisdiction in the circumstances of the case; or the enforcement of the judgment would be contrary to public policy in Nigeria.³⁸ The statutes also stipulate the circumstances in which a registered judgment will be set aside. The grounds stated above for refusing to register a foreign judgment may also be relied upon to set aside the registration of a foreign judgment under the 1958 Ordinance, however, under the 1990 Act, the grounds on which a registered foreign judgment may be set aside are contained in section 6 of the Act. Under that provision, an Order for the registration of a foreign judgment shall be set aside, on an application of the person against whom a foreign judgment is registered, if the registering court is satisfied that:

- i. the judgment is not a judgment to which Part I of the 1990 Act applies;³⁹
- ii. the courts of the country of the original court had no jurisdiction in the circumstances of the case;⁴⁰
- iii. 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 defend and did not appear;⁴¹
- iv. the judgment was obtained by fraud;⁴²
- v. enforcement of the judgment would be contrary to the public policy of Nigeria;⁴³
- vi. the rights under the judgment are not vested in the person who applied for registration.⁴⁴

The judgment may also be set aside if ‘the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to 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.’⁴⁵ The registration of the foreign judgment would also be set aside if it is not a judgment to which Part I of the Act Applies. The judgments to which Part I of the 1990 Act applies are money judgments which must be final and conclusive.⁴⁶ The registration of the judgment would also be set aside if the courts of the country of the original court had no jurisdiction in the circumstances of the case. For this purpose, section 6(2)(a) of the Act list the circumstances in which a court will be deemed to have jurisdiction in an action *in personam*, if the judgment debtor who was the defendant in that court:

- i submitted to the jurisdiction of that court by voluntarily appearing in the proceedings, (he would not be taken to have submitted to the jurisdiction of the court if his appearance is merely to contest the

³⁸ This is common ground for refusing to enforce a foreign judgment in most jurisdictions. see Markus Koehnen and Amanda Klein, ‘The Recognition and Enforcement of Foreign Judgment in Canada’ p. 5, Being a paper presented at the International Bar Association Annual Conference held in Vancouver, Canada in 2010.

39 s. 6(1)(a)(i) of the 1990 Act

40 s. 6(1)(a)(ii) of the 1990 Act

41 s. 6(1)(a)(iii) of the 1990 Act

42 s. 6(1)(a)(iv) of the 1990 Act

43 s. 6(1)(a)(v) of the 1990 Act

44 s. 6(1)(a)(vi) of the 1990 Act

45 s. 6(1)(b) of the 1990 Act

46 G. *Omoaka* (n 32)

- jurisdiction of the court, protecting or obtaining the release of property seized or threatened with seizure in the proceeding;⁴⁷ or
- ii. was plaintiff in, or counter-claimed in, the proceedings in the original court;⁴⁸ or
 - iii. had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of the court or of the courts of the country of that court;⁴⁹ or
 - iv. was, when the proceedings were instituted, resident in, or, being a body corporate, had its principal place of business in, the country of that court; or
 - v. had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place.⁵⁰

This section has been the basis of a number of both the appellate and apex court decisions.⁵¹ In *Thelma Hyppolite v. Dr Joseph Egharevba*,⁵² the appellant was the plaintiff in a civil suit at the Superior Court of Suffolk County in the Commonwealth of Massachusetts, United States of America while the respondent was the defendant. The Massachusetts court awarded the sum of \$2, 500,000 (U. S. dollars) against the respondent and two others for medical malpractice. Less than a month after the judgment was given, the overall judgment debt together with interest was assessed at over \$3,000,000.00 (three million US dollars). Subsequently, Dr. James Gev, one of the defendants paid the sum of \$200,000.00 (two hundred thousand U.S. dollars) out of the overall judgment debt. The respondent did not pay any part of the judgment debt. Three years later, the appellant obtained an order at the Benin High Court registering the judgment pursuant to the provisions of section 4(1) of the Foreign Judgment (Reciprocal Enforcement) Act 1990 and about two months after the registration, the respondent applied under section 6 of the same Act to have the registration set aside. The trial court set aside the registration of the judgment. Dissatisfied, the appellant proceeded to the court of appeal. Dismissing the appeal, the Court of Appeal held that by virtue of section 6 of the Foreign Judgment (Reciprocal Enforcement) Act 1961, LFN, 1990, upon an application duly made by a party against whom a judgment may be enforced, the registration of a judgment shall be set aside if the registering court is satisfied that the court of the country of the original court had no jurisdiction in the circumstances of the case.

Also in *21st Century Technologies Ltd v. Teleglobe America* supra the court held that, the registration of the judgment of Fairfax County Court, Virginia, by the Court of Appeal made it a judgment of the court and no longer the judgment of an American Court. The said judgment, having been registered under the relevant Nigerian statutes by section 6(1)(a) and (b) of the Foreign Judgment (Reciprocal Enforcement) Act, the Court of Appeal has power to set it aside if the conditions prescribed therein were met.

In the two decisions above, it is obvious that although the appellate courts based their judgments on the provision of the statute, it was as if they were applying a common law rule because at common law, a court has no power to exercise jurisdiction over anyone beyond its limits and no action *in personam* can be taken against a defendant unless he has been served with a writ while present in England or unless by virtue of some statutory power, notice of the writ or the writ has been served on him abroad.

47 s. 6(2)(a)(i) of the 1990 Act

48 s. 6(2)(a)(ii) of the 1990 Act

49 s. 6(2)(a)(iii) of the 1990 Act

50 s. 6(2)(a)(iv) of the 1990 see *Hyppolite v. Egharevba* (1998) 11 NWLR (Pt. 575) 598 at 612 paragraphs A-B
 51 See *Shona-Jason Nigeria Limited v. Omega Air Limited* [2006] 1 NWLR 1; *Dale Power Systems Plc v. Witt & Busch Limited* supra; *21st Century Technologies Ltd v. Teleglobe America* supra; and *Conoil Plc v. Vitol S. A* [2012] 2 NWLR (PT 1283) P.50 where the court of appeal held that, s. 3(2)(a) of the 1958 Ordinance was intended to avail a judgment debtor who can establish that although the foreign court had jurisdiction to entertain the action, the judgment debtor is still not bound by judgment for the reason that it did not submit to the jurisdiction, amongst other reasons.

52 [1998] 11 NWLR (575) 598

3. Conclusion and Recommendations

There is a need to put an end to the lingering debate on the law regulating enforcement of foreign judgment in Nigeria. The legal conditions for enforcement of foreign judgment have been interpreted too broadly to adequately protect the interest of foreign judgment creditors and the reason is because there is too much reliance on the codified common law positions. Therefore, the law and rules should be amended to reflect modern realities. The Courts should 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. More than that, the Minister of Justice should do the needful so that the 1990 Act can become the only enabling statute in relations to the enforcement of foreign judgment in Nigeria. This will go a long way in clearing up the ambiguities and uncertainties that presently work hardship for international commercial transactions.

The importance of enforcement of foreign judgments cannot be overemphasized, especially in an era of increased international trade and foreign investment. Business men engaging in international commercial enterprises are more comfortable doing business with foreign partners knowing that if they obtain judgment from a superior court in their home country; it could be enforced against the judgment debtor in another country.⁵³ The enactment of the 1958 Ordinance and the 1990 Act can be interpreted as an indication of recognition of the need to facilitate international commercial transactions by ensuring that concerns of foreign businesses in this respect are well catered for. This attempt by the Nigerian legal system to fulfil one of the cardinal functions of private international law is, however, hampered by the fact that the 1958 Ordinance is, in the main, antiquated while the 1990 Act is inchoate. The procedure for registration of foreign judgment in Nigeria is fraught with avoidable challenges. Apart from the uncertainty in the statute regulating the enforcement of foreign judgment,⁵⁴ the procedure for registration of foreign judgments does not take into cognizance the evolving trends in global economy and international commerce. While the Apex Court's effort of giving effect to the 1990 Act in *Macauley* and *Vab Petroleum Inc* is commendable, the effect will continue to be less than desirable in the absence of an order of the minister of justice. In addition, there is no Foreign Judgment Enforcement Rules for the Act, the Reciprocal Enforcement of Judgments Rules of the Ordinance which was enacted in 1922 regulates the legal conditions for registration of foreign judgment in Nigeria today. Rules 1 (1) and 5 of the Rules of the Ordinance which provides that the application for enforcement of foreign judgment be made by a motion ex-parte is inconsistent with the modern concept of fair hearing and the current civil procedure rules of courts which stipulate that an adverse party must be put on notice.⁵⁵ It is therefore, without doubt that the Rules of the Ordinance is out of touch with modern realities. The different conditions in the applicable legislations have also produced disastrous result in some cases.⁵⁶ An examination of recent appellate and apex court decisions in this work have shown that the Nigerian courts rely heavily on the 1958 Ordinance and the 1990 Act in the enforcement of foreign judgment in Nigeria but the 1958 Ordinance mainly codified common law positions while the 1990 Act will continue to work hardship in the absence of the Order by the Minister of Justice. They do not meet modern realities when it comes to enforcement of foreign judgments. It is therefore, reiterated that the present legal instruments for the enforcement of foreign judgments in Nigeria are in urgent need of reform.

53 E. Ekpenyon, 'An Appraisal of Challenges of Enforcing Foreign Judgments in Nigeria,' 8 Jul 2014, available at <http://www.highbeam.com>, accessed 31 October, 2016.

54 A. A. Olawoyin (n 21)

55 Ibid

56 For a detailed consideration of ways in which the conditions stipulated for enforcement of foreign judgment act as a drawback to international commercial transactions in the 21st century, see E. Ekpenyong E., 'An Appraisal Of Challenges Of Enforcing Foreign Judgments In Nigeria,' available at <http://www.highbeam.com>, accessed 31 October 2016.