



ICLG

The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2017

2nd Edition

A practical cross-border insight into the enforcement of foreign judgments

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Nigeria

Abimbola Akeredolu



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1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Enforcement by registration		
The Reciprocal Enforcement of Foreign Judgments Ordinance, 1922. This is contained in Cap. 175, Laws of the Federation of Nigeria and Lagos, 1958 (“ the Ordinance ”)	The Ordinance applies to judgments of courts of England, Ireland and Scotland; and by proclamation (made pursuant to section 5 of the Ordinance) was extended to judgments from courts of the Gold Coast Colony and the Colony and Protectorate of Sierra Leone, the Colony of Gambia, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Islands, Newfoundland, New South Wales, St. Lucia, St. Vincent, Trinidad and Tobago and Victoria.	Section 2
The Foreign Judgment (Reciprocal Enforcement) Act, Cap. F35, Laws of the Federation of Nigeria, 2004 (“ the Act ”)	The Act applies to judgments of the courts of commonwealth countries and other foreign countries. Under Section 3(1) of the Act, the Nigerian Minister of Justice has the power to make an Order extending the application of the Act to any foreign country with substantial reciprocity of treatment with respect to the enforcement of foreign judgment. However, the Act is yet to be made applicable to any specific foreign country because the Minister of Justice has not issued the said Order. Section 9 (1) of the Act preserves the applicability of the Ordinance to jurisdictions listed in the box above pending the making of an Order by the Minister extending the application of the Act to such jurisdictions. Hence, Section 9 (2) of the Act provides that the Ordinance will cease to have effect where an Order is made by the Minister extending the application to those jurisdictions.	Section 2

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Enforcement by a fresh action under common law		
Common law	At common law, a foreign judgment constitutes a debt giving rise to a fresh cause of action in favour of the judgment creditor. This position is still applicable in Nigeria until there is any statutory abolition/modification.	Section 2

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

Where the statutory provisions of the Ordinance or Act as explained in paragraph 1.1 are not applicable, the applicable default option is the common law remedy.

2.2 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

Under the Ordinance, the following requirements must be satisfied:

- the application for registration and enforcement of the judgment must be filed within 12 months after the date of the judgment or such longer periods as may be allowed by the courts;
- the original courts must have acted within its jurisdiction.
- the judgment debtor must have voluntarily appeared or otherwise submitted or agreed to submit to the jurisdiction of the English courts, for example;
- the judgment debtor must have been duly served with the court process leading up to the judgment;
- the judgment was not obtained by fraud;
- there is no appeal pending or the judgment debtor is not entitled to appeal and if entitled, has not shown any intention of appealing; and
- the judgment is not in respect of a cause of action which, for reasons of public policy or for some other similar reasons, the courts would have refused to entertain.

A foreign judgment given after the coming into operation of the Order made by the Minister under section 3 of the Act will be

registered where it is final and conclusive between the parties; and where the judgment sum is not in respect of taxes or other charges of like nature, or in respect of a fine or other penalty.

2.3 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Yes. Recognition of a foreign judgment occurs where a court accepts a judicial decision made by a court in another country. Once the judgment is recognised, only then can it be enforced through one of the legally acceptable means of enforcement – e.g. garnishee proceedings. A judgment can also be recognised but not enforced, for example, where a party raises the defence of *res judicata* in an attempt by an adverse party to re-litigate the same issues from a foreign action in a domestic court. In such circumstances, the court may be called upon to recognise the judgment but not to enforce it.

2.4 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

Under the Ordinance, the applicant is required to apply to the High Court for leave to register the foreign judgment by a Petition. A Petition may be brought *ex parte* or on notice. If the applicant files a Petition *ex parte*, the judge may direct that notice of the application be served on the judgment debtor.

The Petition should be supported by an affidavit of facts exhibiting the judgment or a verified or certified, or otherwise duly authenticated copy. The affidavit must also, so far as the deponent can, give the full name, title, trade or business and usual or last known place of abode or business of the judgment creditor and judgment debtor respectively.

Where leave is granted, the order should be served on the judgment debtor. The order should specify the time limit within which the judgment debtor can apply to set aside the registration.

Upon successful registration, and in the absence of an application to set aside the registration, the judgment creditor may take steps to enforce the judgment by activating any of the judgment enforcement mechanisms, e.g. garnishee proceedings.

The foreign judgment sought to be enforced must be a money judgment. As such, judgments of non-monetary nature, such as declarations regarding an existing state of affairs and or injunctions, are not registrable.

At common law, the judgment creditor is to file a Writ of Summons and: (i) apply that the Writ of Summons be placed on the undefended list; or (ii) file a summary judgment application together with the Writ of Summons. The justification for either approach is that the judgment debtor having been adjudged liable for the claimed sum, has no defence to the claims.

Finally, the Act provides a broad framework for the registration of foreign judgments. Thus, section 4 (1) permits a judgment creditor to apply to a superior court in Nigeria for the registration of a foreign judgment.

2.5 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

Depending on the applicable regime, the recognition/enforcement of a judgment can be challenged on any of the following grounds:

- a) where the foreign court had no jurisdiction to hear/determine the case;
- b) if the judgment was obtained by fraud;

- c) if the judgment is contrary to public policy;
- d) the judgment debtor satisfies the registering court that there is a pending appeal against the judgment;
- e) the judgment debtor was not served with the court process of the original court, and did not appear in the proceedings;
- f) if the judgment was wholly satisfied at the time of seeking recognition and enforcement;
- g) that the rights under the judgment are not vested in the person by whom the application for registration was made; and
- h) the judgment could not be enforced by execution in the original court.

The challenge should be raised immediately once the judgment debtor is served with the court processes seeking to register and enforce the judgment or such other time as the court may permit.

2.6 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

The Constitution vests jurisdiction regarding specific subject matters in different courts. There is an unsettled debate as to whether foreign judgments which relate to specific subject matters can only be registered and enforced in the court with exclusive jurisdiction to determine the matters. For example, Section 251 (1) of the Constitution vests exclusive jurisdiction in the Federal High Court on a number of subject matters including (without limitation) customs and excise, oil and gas, revenue of the Federal Government, and banking (excluding banker-customer relationships).

In the case of **Access Bank Plc vs Akingbola (Unreported, Suit No M/563/2013)**, delivered on 18th February 2014, the Lagos State High Court refused to enforce a foreign judgment on the ground that the subject matter of the underlying dispute fell under the exclusive jurisdiction of the Federal High Court as stipulated by Section 251 (1) (e) of the Constitution. This matter is now on appeal and the debate therefore remains unsettled.

Also, Section 20 of the Admiralty Jurisdiction Act (the “AJA”) potentially renders void any foreign jurisdiction clause contained in a contract in respect of admiralty matters. The AJA is not clear on whether a foreign judgment on an admiralty subject matter is enforceable in Nigeria. Although there is no case law to clarify the position yet, there is a possibility that a Nigerian court may refuse to enforce a foreign judgment on an admiralty subject matter, especially if the case should have been litigated in Nigeria in the first place.

2.7 What is your court’s approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

Where there is a conflicting local judgment between the parties relating to the same issue, the local judgment will take precedence and the court will not enforce the foreign judgment.

Where local proceedings are pending between the parties as well as a foreign judgment involving the same parties, the question will be whether, and to what extent, there is an abuse of court process by the parties. If the proceedings leading up to the foreign judgment were validly commenced prior to the institution of the local proceedings, and there are no vitiating elements capable of affecting the registration and enforcement of the judgment, it appears that the local proceedings may be considered to be an abuse of court process.

2.8 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

Where a foreign judgment is in conflict with the local laws of Nigeria, the court is not likely to register and enforce the judgment. Public policy can be relied upon to refuse recognition and enforcement of a foreign judgment that directly conflicts with the provisions of local laws. On the contrary, where there is a prior judgment on the same or similar issue between different parties, the judgment will still be enforced, notwithstanding the prior judgment. This is because under Nigerian law, a judgment only binds the parties to the proceedings.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

Where a foreign judgment purports to apply the laws of Nigeria, the court will recognise and enforce the foreign judgment, provided that it satisfies the requirements for recognition and enforcement under Nigerian law.

2.10 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

Nigeria is a federation of 36 States. Legislative powers are shared between the Federal and State governments. Recognition and enforcement of judgments is governed by federal legislation which applies throughout the country.

However, in respect of enforcement under the common law, the Civil Procedure Rules of the court in which the action is brought will apply and the provisions of such court rules vary from State to State (although with striking similarities).

2.11 What is the relevant limitation period to recognise and enforce a foreign judgment?

At common law, the limitation period is usually 10 to 12 years from the date of delivery of the judgment, depending on the State in question.

Under the Ordinance, the limitation period is 12 months, while under the Act the limitation period is six years.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

The requirements of recognition and enforcement of a foreign judgment are:

- the foreign judgment must be: (i) final and conclusive; and (ii) must have been given by a superior court of competent jurisdiction;
- it must be a judgment for a definite sum of money. It cannot be a tax, penalty or fine;

- the RES (subject matter) must be situated in the foreign country (i.e. the country that gave judgment) as at the time of delivery of the judgment;
- the application to enforce the foreign judgment must be made within 12 months (under the Ordinance) or six years (under the Act) from the date of delivery of the judgment;
- the judgment must not have been obtained by fraud; and
- the judgment must not be contrary to public policy.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

Under the Ordinance/Act, recognition is by the statute (once the judgment falls under the type of judgments recognised by the Ordinance/Act). Thus, an application is made merely to register and enforce the judgment. On the other hand, a party seeking to enforce a foreign judgment under the common law is to institute a fresh action and plead the judgment in his pleadings. It therefore means that there is no statutory recognition under the common law regime.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

At common law, the party seeking to rely on a foreign judgment must institute a fresh action to in order to enforce the foreign judgment in Nigeria. To save time and where the claimant strongly believes his claim cannot be contested, the claimant's best option will be to institute the fresh action by means of the undefended list procedure or summary judgment procedure, where a judicial decision can be made without plenary trial. However, an action instituted under the undefended list or summary judgment procedure may be defended by a defendant if he shows good grounds.

Under the Ordinance/Act, the procedure for recognition and enforcement is by filing an originating application (i.e. Petition), supported by a verifying affidavit (with a copy of the judgment among other documents attached as exhibits).

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

Recognition/enforcement of foreign judgments can be challenged on the following grounds:

- where the foreign court had no jurisdiction;
- if the judgment was obtained by fraud;
- if the judgment is contrary to public policy;
- if the matter was originally *res judicata*; and
- under the Ordinance/Act, if there is no reciprocal arrangement with the country from where the judgment was obtained.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

Once a foreign judgment has been recognised, the enforcement

methods available to the judgment creditor will include the following: (a) writ of sequestration; (b) writ of *FiFa*; (c) garnishee proceedings; and (d) judgment summons.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

There have not been any noteworthy legal developments in this jurisdiction in the last 12 months. The decisions of the High Courts which have generated controversial debates on this subject in the recent past are currently on appeal. The aforementioned decision is briefly explained below:

In the case of **Access Bank Plc vs Akingbola (Unreported, Suit No M/563/2013)**, delivered on 18th February 2014), the Lagos State High Court refused to enforce a foreign judgment on the ground that the subject matter of the underlying dispute fell under the exclusive jurisdiction of the Federal High Court under Section 251 (1) (e) of the Constitution. When another application was subsequently filed at the Federal High Court for enforcement of the same judgment, in **Suit No FHC/L//CP/469/2014: Access Bank Plc vs Akingbola** (Unreported, delivered on 17th November 2014), the Federal High Court refused to enforce the judgment on the ground that the court in England from where the judgment was obtained had refused

the judgment debtor's application for leave to appeal; whereas the subject matter of the dispute falls under the matters in which the Constitution stipulates a right of appeal by right (and did not require leave).

For a discussion on the decision of the State High Court, see, for example, Pontian N. Okoli, "Subject matter jurisdiction: the recognition and enforcement of English judgments in Nigeria and the need for a universal standpoint", *Yearbook of Private International Law*, Vol 17 (2015/2016 507–525).

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

A client who intends to enforce a foreign judgment in Nigeria should specifically seek legal advice in respect of: (i) the relevant legal regime (the Ordinance, the Act or common law) which is applicable to the particular judgment sought to be enforced; (ii) the court which is vested with jurisdiction to determine the subject matter (if any), as this may impact on the choice of court to approach for enforcement; and (iii) the right of appeal of the judgment debtor (if any), as this may impact on the issue of finality.

Also, such clients are advised to ensure that the application for enforcement is filed within 12 months of the date of delivery of the judgment.



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