

SUPREME COURT OF NIGERIA
FRIDAY 12TH DECEMBER, 2003. SC. 109/2002
CORAM:- I. L. KUTIGI, A. I. KATSINA-ALU,
U. A. KALGO, N. TOBI, S. O. UWAIFO, JJSC

ANDREW MARK MACAULAY APPELLANT
AND
RAIFFEISEN ZENTRAL BANK
OSTERREICH AKIENGESELL
SCHAFT (RZB) OF AUSTRIA RESPONDENTS

JUDGMENTS - Foreign judgments - Registration - By s. 3 of the 1990 Act - Nigerian Minister of Justice can extend application of part 1 thereof to any foreign country - If he is satisfied that judgments of Nigerian courts - Will be accorded same reciprocity (H1)

COURTS - Judgments - Foreign judgments - Registration - Competence - Since the registration was made by the High Court after twelve months - It was incompetent (H2)

APPEALS - Courts - Issues - Answer to issue 1 is enough to dispose of the appeal - Hence no useful purpose will be served - By considering issue 2 (H3)

FACTS

Defendant/appellant is a foreigner who has been residing in Nigeria. He, together with 2 other persons who resided outside Nigeria, guaranteed a loan from plaintiff/respondent to a company called Constante Trading Limited based in Channel Island. The loan was to be repaid by the company in accordance with the terms and conditions set out in the deed of guarantee but the company defaulted. Consequently, respondent sued appellant and the other 2 guarantors jointly and severally in the High Court, Queen's Bench Division Commercial Court in England and obtained judgment on the 19th of December, 1995 against them jointly and severally for the sum of US \$5,500,000.00 with interest in accordance with the terms in the deed of guarantee.

On the 28th of August, 1997, respondent applied to the Lagos

High Court for leave to register the said judgment. By an order made on 8th of September, 1997, the court granted leave and the judgment was accordingly registered as a foreign judgment. Thereafter, appellant applied to set aside the said registration on the grounds that it was not in accordance with the relevant law (Reciprocal Enforcement of Judgments Act, Cap. 175 of Laws of the Federation 1958) and that it was contrary to public policy in Nigeria. The court dismissed the petition and held that the judgment was validly registered. This led to appellant filing an appeal to the Court of Appeal, Lagos Division. The appeal was dismissed and hence he appealed further to Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the Court of Appeal was right in holding that the registration of the judgment of the High Court of England in Nigeria after twelve months from the date of judgment was within time and competent.

2. Whether the Court of Appeal was right in holding that the registration of the foreign judgment in this case was not contrary to public policy.”

RAIFFEISEN ZENTRAL BANK

HELD (Unanimously allowing the appeal per **KALGO JSC**)

Foreign judgments - Registration

1. The Reciprocal Enforcement of Judgments Act (Cap. 175 of 1958) hereinafter referred to as the 1958 Ordinance, deals inter alia, with the issue of the registration of judgments obtained in Nigeria and United Kingdom and other parts of Her Majesty’s dominions and territories. It is pertinent to observe that the Foreign Judgments (Reciprocal Enforcement) Act (Cap. 152 of 1990) hereinafter referred to as the 1990 Act did not specifically repeal the 1958 Ordinance. This means that it still applies to the United Kingdom and to parts of Her Majesty’s dominions to which it was extended by proclamation under S.5 of the Ordinance before the coming into force of the 1990 Act. Section 3 of the 1990 Act empowers the Minister of Justice of the Federation of Nigeria to extend the

application of Part 1 of that Act with regard to registration and enforcement of foreign judgments of superior courts, to any foreign country, including United Kingdom if he is satisfied that the judgments of our superior courts will be accorded similar or substantial reciprocity in those foreign countries. And once an order is made under section 3 of the 1990 Act in respect of any part of Her Majesty's dominions to which the 1958 Ordinance earlier applied, the latter ceases to apply as from the date of the order. The learned counsel for the parties have both agreed that the Minister of Justice has not exercised that power in respect of any foreign country under the said Act. I also agree with them on this and I so find.
(p. 2706 A)

Foreign judgments - Registration - Competence

2. I have carefully read the briefs of counsel in this appeal and the decided cases and treaties referred to therein and having regard to what I have stated above, I am of the firm view and find accordingly that the provisions of section 3 of the 1958 Ordinance and section 10(a) of the 1990 Act apply to the question of the registration of the judgment in the instant case. Each of these sections provides that the judgment to be registered under it must be registered within twelve months from the date of the judgment or any longer period allowed by the registering court. In the instant case, the judgment was delivered on the 19th of December, 1995, and the application for registration of the judgment was filed in the trial High Court on the 18th of August, 1997. This is one year, eight months from the date of the judgment. This is clearly in contravention of the provisions of both sections mentioned earlier. I therefore agree with the learned counsel for the appellant that the registration of the judgment in question made by the trial High Court and confirmed by the Court of Appeal was incompetent and not in accordance with the relevant laws. I therefore answer issue 1 in the negative. (p. 2709 D)

APPEALS - Courts - Issues

3. It appears to me that having answered issue 1 in the nega-

tive, it is enough to dispose of this appeal and no useful purpose will be served by looking into or considering issue 2. In fact it does not arise at all in the circumstances as it appears to be more than an academic exercise which this court has long refrained from entertaining. (p. 2709 H)

B

NOTABLE POINT OF INTEREST

TOBI JSC

1. Interpretation of statutes - Principle

- C It is elementary law that where a statute is clear, the duty of the court is to give the clear provisions literal or ordinary interpretation. While counsel may look out for favourable interpretation, the court will stick to the plain words of the statute and interpret it to indicate the clear intention of the draftsman. Learned counsel seems to give a
- D burden to the section which it cannot carry. (p. 2715 F)

REPRESENTATION

Phillip Umeadi, Jnr, for the Appellant

E I. O. Iluyomade, Esq, for the Respondents

CASES REFERRED TO

Anyaduba v. N.R.TC. Ltd. (1992) 5 NWLR (Pt. 243) 535.

Titiloye v. Olupo (1991) 7 NWLR (Pt. 205) 519

F Bamgboye v. University of Ilorin (1999) 10 NWLR (Pt. 622) 290

Eperokun v. University of Lagos (1986) 4 NWLR (Pt.34) 162

Halaoui v. Grosvenor Casinos Limited (2002) 17 NWLR (Pt.795) 28

STATUTES REFERRED TO

- G Reciprocal Enforcement of Judgments Act, Cap. 175 of Laws of the Federation 1958, ss. 3 & 5

Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152, Laws of the Federation 1990. ss. 3, 4, 9(1) and 10.

H

LEAD JUDGMENT BY KALGO JSC

The issues which arise for the determination of this court in this appeal are on a very narrow compass. They are:

“1. Whether the Court of Appeal was right in holding that the

registration of the judgment of the High Court of England in Nigeria after twelve months from the date of judgment was within time and competent.

2. Whether the Court of Appeal was right in holding that the registration of the foreign judgment in this case was not contrary to public policy.”

The appellant is a foreigner who has been residing in Nigeria since 1986. He together with 2 other persons who resided outside Nigeria guaranteed a loan from the respondent to a company called Constante Trading Limited based in Channel Island. The loan was to be repaid by the company in accordance with the terms and conditions set out in the deed of guarantee and the company defaulted.

The respondent sued the appellant and the other 2 guarantors jointly and severally in High Court, Queen's Bench Division Commercial Court in England and obtained judgment on the 19th of December, 1995 against them jointly and severally for the sum of Five Million, Five Hundred Thousand U.S. Dollars (US \$5,500,000.00) with interest in accordance with the deed of guarantee.

On the 28th of August, 1997, the respondent by an ex-parte petition applied to the Lagos High Court for leave to register the said judgment and by an order made on 8th of September, 1997, Alabi J. granted leave and the judgment was accordingly registered as a foreign judgment. By a petition on notice filed on 22nd of October, 1997 the appellant applied to set aside the said registration on the grounds that it was not in accordance with the relevant law and was contrary to public policy in Nigeria. The petition was heard by the learned trial Judge who on 6th of February, 1998 dismissed it and held that the judgment was validly registered. The appellant appealed to the Court of Appeal against that order, but his appeal was dismissed and he appealed further to this court.

Both parties filed their respective briefs of argument in the appeal and each raised only 2 similar and identical issues for the determination of this court as set out earlier in this judgment.

Issue 1

In my respectful view two Federal laws are relevant here. (1) Reciprocal Enforcement of Judgments Act, Cap. 175 of Laws of the Federation 1958 and (2) Foreign Judgments (Reciprocal Enforce-

ment) Act, Cap. 152, Laws of the Federation 1990. Learned counsel for the parties are also ad idem on this.

The Reciprocal Enforcement of Judgments Act (Cap. 175 of 1958) hereinafter referred to as the 1958 Ordinance, deals inter alia, with the issue of the registration of judgments obtained in Nigeria and United Kingdom and other parts of Her Majesty's dominions and territories. It is pertinent to observe that the Foreign Judgments (Reciprocal Enforcement) Act (Cap. 152 of 1990) hereinafter referred as the 1990 Act did not specifically repeal the 1958 Ordinance. This means that it still applies to the United Kingdom and to parts of Her Majesty's dominions to which it was extended by proclamation under S.5 of the Ordinance before the coming into force of the 1990 Act. Section 3 of the 1990 Act empowers the Minister of Justice of the Federation of Nigeria to extend the application of Part 1 of that Act with regard to registration and enforcement of foreign judgments of superior courts, to any foreign country, including United Kingdom if he is satisfied that the judgments of our superior courts will be accorded similar or substantial reciprocity in those foreign countries. And once an order is made under section 3 of the 1990 Act in respect of any part of Her Majesty's dominions to which the 1958 Ordinance earlier applied, the latter ceases to apply as from the date of the order. The learned counsel for the parties have both agreed that the Minister of Justice has not exercised that power in respect of any foreign country under the said Act. I also agree with them on this and I so find.

Section 9(1) of the 1990 Act provides:

"This Part of this Acts shall apply to any part of the Commonwealth other than Nigeria and to judgments obtained in the courts thereof as it applies to foreign countries and to judgments obtained in the courts of foreign countries, and the Reciprocal Enforcement of judgments Ordinance shall cease to have effect except in relation to those parts of Her Majesty's dominions other than Nigeria to which it extended at the date of the commencement of this Act."

By this provision, Part 1 of the 1990 Act applies to all Commonwealth countries as it applies to foreign countries and the 1958 Ordinance ceases to apply to them except those to which it was ex-

tended before the 1990 Act came into operation. The 1990 Act came into operation on the 1st of February, 1961. This section is not automatically extending Part I of the said Act to Commonwealth countries other than Nigeria: all it was saying was that the provisions of Part I of the Act shall apply to the Commonwealth as it applies to foreign countries and where the 1958 Ordinance had been extended to any country before the commencement of the said Act the Ordinance ceases to have effect. If the intention of the law makers was to be otherwise, section 3 would have been superfluous and unnecessary.

The 1958 Ordinance was promulgated as No.8 of 1922 “to facilitate the reciprocal enforcement of judgments obtained in Nigeria and in the United Kingdom and other parts of Her Majesty’s Dominions and Territories under Her Majesty’s protection”. It came into operation on the 19th of January, 1922. There is no doubt therefore that it applies to all judgments of the superior courts obtained in the United Kingdom and its application can be extended to any other territory administered by the United Kingdom or any other foreign country. This can be done by proclamations pursuant to section 5 of that Ordinance. Therefore the 1958 Ordinance not having been repealed by the 1990 Act, still applies to the United Kingdom.

There is no doubt that the judgment in question was given by a High Court in the United Kingdom. Therefore the provisions of the 1958 Ordinance fully apply to it. Section 3 of the Ordinance provides:-

“3(1) Where a judgment has been obtained in the High Court in England or Ireland, or in the court session in Scotland, the judgment creditor may apply to a High Court at any time within twelve months after the date of the judgment or such longer period as may be allowed by the lower court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case it thinks it just and convenient that the judgment should be enforced in Nigeria and subject to the provisions to be registered accordingly.”

Applying the 1958 Ordinance, the judgment in question must be registered within 12 months after the date of the judgment or any longer period allowed by the registering High Court. At the same time since the Minister of Justice has not yet exercised his power under section 3 of the 1990 Act extending the application of Part I of

that Act to the United Kingdom where the judgment in question was given, then section 10(a) of the said Act can also apply. That section reads:-

“Notwithstanding any other provision of this Act-

B *(a) a judgment given before the commencement of an order under section 3 of this Act applying Part I 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.”*

C 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 D 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 E not.

The substantial point in issue and which was in contention in this appeal is that the judgment in question was registered by the Lagos High Court and confirmed by the Court of Appeal in contra- F vention of the relevant and applicable laws. The view expressed by the High Court and confirmed by the court of Appeal was that by virtue of the provisions of section 9(1) of the 1990 Act it was not necessary to extend the application of Part I of the said Act to the Commonwealth countries and that although the 1958 Ordinance G was saved from extinction by the said section, the provisions of section 4 of the 1990 Act still applies. This view was clearly wrong having regard to what I have said earlier in this judgment. In addition the Court of Appeal clearly found the relevance of the provisions of section 10 of the 1990 Act in cases where an order under section 3 of H the said Act was not made, but failed to properly apply it in cases of the judgment in question. It said:-

“This does not mean that the provisions of section 4 of the same Law have been cancelled by Sec. 10(a) & (b). It is my view that the general period of limitation for registration and application of

judgments for enforcement in foreign countries is six years but an application may be made for registration within twelve months from the date of judgment or such longer period as may be allowed by a superior court in Nigeria in cases of certain judgments referred to under Cap. 175 of 1958."

This view is clearly an amalgam of the provisions of section 4 B of the 1990 Act and section 3 of the 1958 Ordinance. This is obviously wrong since every section of the law must be taken and interpreted separately except where the law so provides or the circumstances dictate. It is not so here. According to the provisions of section 4 of the 1990 Act and section 3 of the 1958 Ordinance, the C periods within which a judgment must be registered are within 6 years or 12 months respectively from the date of the judgment, or any further period allowed by the registering court in the case of section 3 of the 1958 Ordinance. D

I have carefully read the briefs of counsel in this appeal and the decided cases and treaties referred to therein and having regard to what I have stated above, I am of the firm view and find accordingly that the provisions of section 3 of the 1958 Ordinance and section 10(a) of the 1990 Act apply E to the question of the registration of the judgment in the instant case. Each of these sections provides that the judgment to be registered under it must be registered within twelve months from the date of the judgment or any longer period F allowed by the registering court. In the instant case, the judgment was delivered on the 19th of December, 1995, and the application for registration of the judgment was filed in the trial High Court on the 18th of August, 1997. This is one year eight months from the date of the judgment. This is clearly in G contravention of the provisions of both sections mentioned earlier. I therefore agree with the learned counsel for the appellant that the registration of the judgment in question made by the trial High Court and confirmed by the Court of Appeal was incompetent and not in accordance with the relevant laws. H I therefore answer issue 1 in the negative.

It appears to me that having answered issue 1 in the negative, it is enough to dispose of this appeal and no useful purpose will be served by looking into or considering issue 2.

2710 Macaulay v. R.Z.B. of Austria (2003) 12 KLR Kalgo JSC

See Anyaduba v. N.R.TC. Ltd. (1992) 5 NWLR (Pt. 243) 535. ***In fact it does not arise at all in the circumstances as it appears to be more than an academic exercise which this court has long refrained from entertaining.*** See Titiloye v. Olupo (1991) 7 NWLR (Pt. 205) 519 at 534; Bamgboye v. University of Ilorin (1999) 10 NWLR (Pt. 622) 290 at 330; Eperokun v. University of Lagos (1986) 4 NWLR (Pt.34) 162 at 179.

For the reasons stated above, I find that there is merit in this appeal and I allow it. The registration of the judgment in question made by the trial High Court and confirmed by the Court of Appeal is incompetent and is hereby struck out. I award N10,000.00 costs in favour of the appellant against the respondent.

D ***KUTIGI JSC***

I read before now the judgment just delivered by my learned brother, Kalgo, JSC. I agree with his reasoning and conclusion to allow the appeal. The appeal is accordingly allowed. The decisions of the Court of Appeal and that of the High Court are set aside. The application for registration of judgment filed in the High Court being incompetent is struck out with N10,000.00 costs to the appellant.

F ***KATSINA-ALU JSC***

I have had the advantage of reading in draft the judgment of my learned brother Kalgo, JSC I agree with it and for the reasons which he has given, I too allow the appeal with N10,000.00 costs in favour of the appellant.

G

UWAIFO JSC

I agree with the judgment of my learned brother Kalgo, JSC which I had the opportunity to read in advance.

H The plaintiff took out a writ of summons against three defendants (including the appellant who was the 3rd defendant) at the Queen's Bench Division, England, on 4th May, 1995 for an amount of US \$5,500,000 together with interest. This was pursuant to the failure to satisfy the terms of the guarantee dated 30th August, 1991

in London which the defendants jointly and severally entered with the plaintiff wherein they unconditionally guaranteed that they would on demand pay the plaintiff the said amount owing by Constante Trading Limited or for which that company may become liable to the plaintiff.

On 19th December, 1995 judgment was entered for that amount together with interest to be assessed in favour of the plaintiff (now respondent). The respondent applied to the High Court of Lagos on 28th August, 1997 for leave to register the said judgment against the appellant. On 8th September, 1997, the High Court granted leave. The appellant sought to set aside the registration of the foreign debt on the ground that it was not registered within 12 months from the date the judgment was delivered. This was resisted. But on 6th February, 1998 the petition by which the appellant sought to set the registration aside was dismissed by the High Court presided over by Ade Alabi, J. The appeal against that dismissal was also dismissed by the Court of Appeal, Lagos Division on 15th February, 1999.

The question I wish to deal with is, when, as the law stands today in Nigeria, should a foreign debt be registered from the date it was given? I shall examine the law briefly. Section 3(1) of the Reciprocal Enforcement of Judgments Ordinance (Cap. 175) Laws of the Federation of Nigeria and Lagos, 1958, provides that where a judgment is 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 in Nigeria “at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court” and if in all circumstances the judgment should be enforced in Nigeria, the court may order the judgment to be registered.

By proclamations made by the Governor of Nigeria from December 1, 1922 to February 3, 1927, foreign judgments that may be registered in Nigeria, apart from judgments obtained in the United Kingdom, were extended to other countries. But the 12 months’ period for registration remained.

In 1961, the Foreign Judgments (Reciprocal Enforcements) Act (Cap. 152) Laws of the Federation of Nigeria was enacted. Under section 4(1), the period within which a foreign judgment may be registered in Nigeria was extended to six years from the date of such

judgment. But section 3(1) of the Act makes the applicability of the six years' period subject to an order by the Minister of Justice directing that Part I of the Act [which includes section 4(1)] shall extend to a relevant foreign country.

Section 9 of the Act preserves the effect of the Reciprocal Enforcement of Judgments Ordinance until an order envisaged under section 3(1) is made by the Minister. This relates to all foreign judgments including those given in the United Kingdom which should be registered within 12 months or such longer period the court may allow them. The provisions of this section defeat the argument of Mr. Iluyomade on behalf of the respondent that the United Kingdom judgments could be registered within six years even without the Minister's order. He relied on a passage in a judgment of the Court of Appeal: *The Mercantile Group (Europe) A.G. v. Victor Aiyela and others*, CA/L/348/92 delivered on July 1, 1996 (unreported) which, on reading, I find it supports the view I have expressed above. In that passage which, as it seems, Mr. Iluyomade completely misunderstood, Ayoola, JCA, who wrote the leading judgment, said:

"It is evident from the provisions of section 9 of Cap. 152 that the Reciprocal Enforcement Judgments Ordinance continues to have effect to those parts of Her Majesty's dominions to which it extended at the date of the commencement of Cap. 152 (at 1st February, 1961)"

... What seems manifest from its provisions is that they had saved the Reciprocal Enforcement of Judgments Ordinance from extinction. A statute whose continued operation an existing law has recognised cannot be said to have ceased to exist."

The above is a correct exposition of the law as regards the two enactments concerned. If the Ordinance is saved from extinction it continues to apply to foreign countries intended thereunder, including the United Kingdom. That means, of course, that it applies to the registration of the judgment in question in this appeal. The relevant portion of section 9 of Cap. 152, Act reads:

"9(1) This Part of this Act shall apply to any part of the Commonwealth... and to judgments obtained in the courts thereof as it applies to foreign countries and to judgments obtained in the courts of foreign countries, and the Reciprocal Enforcement of Judgments Ordinance shall cease to have effect except in relation to those parts

of Her Majesty's dominions ... to which it extended at the date of the commencement of this Act.

(2) If an order is made under section 3 of this Act extending Part I of this Act to any part of Her Majesty's dominions to which the Reciprocal Enforcement of Judgments Ordinance extended as aforesaid, the said Act shall cease to have effect in relation to that part of Her Majesty's dominions, except as regards judgments obtained before the coming into operation of the order and registered in accordance therewith."

The provision is quite simple to understand. It is when an order is made by the Minister under section 3 of the Act that the Ordinance will completely cease to have effect as appropriate. The matter does not even end there because section 10 of the Act then proceeded to make provision for the registration of (a) any judgment given before the Minister makes an order under section 3 and (b) any judgment given after such order may have been made.

The section reads thus:

"10 Notwithstanding any other provision of this Act -

(b) a judgment given before the commencement of an order under section 3 of this Act applying Part I 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; and

(c) any judgment registered under the Reciprocal Enforcement of Judgments Ordinance at the time of the coming into operation of an order made under section 3 of this Act in respect of the foreign country where the judgment was given shall be treated as if registered under this Act and compliance with the rules applicable to the former Act shall satisfy the requirements of rules made under this Act."

As no order has up till now been made by the Minister, section 10(a) above, which in effect is the same as section 3(1) of the Ordinance, applies to the present judgment. Since there was no compliance therewith, the registration was incompetent.

For the above reasons and those more fully stated by my learned brother Kalgo, JSC, I too allow this appeal and set aside the said registration. I award N10,000.00 costs in favour of the appellant.

TOBI JSC

I have read in draft the judgment of my learned brother Kalgo, JSC and I agree with him. The two statutes which are germane to this appeal are the Reciprocal Enforcement of judgments Ordinance, Cap. 175, Laws of the Federation and Lagos, 1958 and the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152, Laws of the Federation of Nigeria, 1990. Section 3(1) of the 1958 Ordinance provides as follows:

“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 months after the date of the judgment or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case it thinks it just and convenient that the judgment should be enforced in Nigeria and subject to the provisions of this Ordinance, order the judgment to be registered accordingly.”

Section 10(a) of the Foreign Judgments (Reciprocal Enforcement) Act, 1990 provides as follows:

“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 I 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.”

As it is, both provisions give a maximum period of twelve months from the date of the delivery of the judgment within which the judgment should be registered. In both sections, the court has the discretion to extend the period beyond twelve months. Section 10(a) makes a cross reference to section 3 of the 1990 Act. By the section, the Minister of Justice is enjoined to make an order applying Part I of the Act to the foreign country where the judgment was given, which in this appeal is England.

The court below held that the judgment was registered within the statutory period. Delivering the leading judgment of the court, Ige, JCA said at page 230 of the record:

“In the instant case the judgment was delivered on 19th December, 1995. Application for Registration of the judgment was filed

in the Nigeria High Court on 18th August, 1997. The application was still within time hence it is proper, valid and competent."

It is clear from the above that the application for the registration of the judgment was made after the statutory period of twelve months. As a matter of fact, from the date of delivery of the judgment in England to when the application for registration was filed is about twenty months. This is a clear violation of the provisions of section 3(1) of the 1958 Ordinance and section 10(a) of the 1990 Act.

Learned counsel for the respondent Mr. I.O. Iluyomade, referred to the case of Halaoui v. Grosvenor Casinos Limited (2002) 17 NWLR (Pt.795) 28. That case decided that in resolving the issue of enforceability of a foreign judgment in Nigeria, it is the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152, Laws of the Federation of Nigeria, 1990 and not the common law or the Evidence Act that determines the matter. The issue before the court was whether the foreign judgment could be set aside. The court dealt with sections 4 and 6 of the Act. Apart from the decision that the applicable law is the Foreign Judgments (Reciprocal Enforcement) Act and not the common law or the Evidence Act, I do not see the relevance of the decision in this appeal.

Learned counsel for respondent also submitted that the need for the minister to make an order under s. 3 only arises in respect of non-commonwealth countries and countries in which there are no reciprocal rules with Nigeria. With respect, section 3 does not so provide. The submission of learned counsel is tantamount to rewriting the provision of the section, a role or function he cannot perform.

It is elementary law that where a statute is clear, the duty of the court is to give the clear provisions literal or ordinary interpretation. While counsel may look out for favourable interpretation, the court will stick to the plain words of the statute and interpret it to indicate the clear intention of the draftsman. Learned counsel seems to give a burden to the section which it cannot carry.

It is for the above reasons and the fuller reasons given by my learned brother, Kalgo, JSC, that I too allow the appeal. I also award N10,000.00 costs in favour of the appellant. Appeal allowed.