

SUPREME COURT OF NIGERIA
27TH JANUARY, 2006. SC. 108/2001
CORAM:- S. U. ONU, A. I. KATSINA-ALU, N. TOBI, G. A.
OGUNTADE, M. MOHAMMED, JJSC

Marine & General Assurance Company Plc APPELLANT
And

1. Overseas Union Insurance Limited
2. Finish Marine Insurance Company Limited
3. Keskinaiven Hameen Vakuutusyhti
(A Body Corporate)
4. Public Insurance Company Limited RESPONDENTS
5. Omsesidiga Sjöförsäkringsbolaget
(A Body Corporate)
6. Samvinnutryggingar Reinsurance Company Limited
7. Universal Casualty and Surety Company Limited
8. Koryo Fire and Marine Insurance Company Limited

STATUTES - Applicability - Judgments - Registration and enforcement of foreign judgment - It is the 1922 and 1961 Acts that are applicable (H1)

STATUTES - Enforceability - Foreign Judgments Act - Registration of foreign judgment - S. 4 of the Act - Is not enforceable - Without an order promulgated - By the Minister of Justice (H2)

JUDICIAL PRECEDENTS - Stare decisis - Supreme Court - Is bound by its previous decision in Macaulay case - As it is on all fours with the present case (H3)

JUDGMENTS - Derailment - Appeals - Misconstruction of statute - Made lower court derail - In failing to apply clear provisions - Of the Foreign Judgments Act (H4)

JUDGMENTS - Foreign judgment - Registration - Limitation period -

Where the statute provided for 12 months limitation period - Application to register foreign judgment - Brought after about 4 years - Will not be granted (H5)

APPEALS - Issues - Definition - Sufficiency of lone issue - Where lone issue raised by the Supreme Court - Sufficiently determines the case - Academic consideration of the other issues - Is unnecessary (H6)

FACTS

_____ Before the High Court of Lagos the petitioners/applicants (now respondents) filed an application against the appellant. By their petition/application dated 16-5-1994, respondents sought the court's order to register a judgment dated 25-5-1990, as a judgment of the High Court of Lagos pursuant to the Foreign Judgments/Reciprocal Enforcement Act Cap.152, LFN 1990. And that the said judgment which awarded some pounds sterling and U.S. dollars to the respondents be enforced against the appellant. The judgment in question was delivered by the Queens Bench Division, Commercial Court, England. Appellant filed a counter affidavit against the application and the respondents filed a further affidavit in reply.

In a considered ruling, the trial court dismissed the respondents' petition/application mainly on the ground that the application was not filed within the 12 months period prescribed under s.3(1) of the Foreign Judgments Reciprocal Enforcement Act. Respondents' appeal to the Court of Appeal was upheld as that court wrongfully relied on a section of the said Act that was not yet enforceable, as the Minister of Justice has not promulgated any order as provided within the Act. Being dissatisfied, the appellant has now appealed to the Supreme Court.

ISSUE FOR DETERMINATION

Whether the court below was right having regard to the provisions of sections 3(1) and 10 of the Foreign Judgment (Reciprocal Enforcement) Act CAP 152 of the Laws of the Federation 1990, that the trial court was in error in dismissing the application to register the foreign judgment of the High Court of Justice, Queens Bench Division, Commercial Court, England delivered on 25-5-1990.

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

STATUTES - Applicability

1. In the present case, the foreign judgment which is the subject of dispute between the parties is a judgment of the Queens Bench Division Commercial Court of the High Court of Justice, England in the United Kingdom. The Law applicable to the proceedings for the registration of that 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. It is in fact apparent from the record of the appeal that the learned counsel to the respondents at the trial High Court had an idea of the applicability of the 1958 Ordinance to the respondents application having filed the same under it but gave it a wrong year '1990' instead of '1958'. As the learned counsel was not sure of the statute under which the application could have been brought, led to his filling an amended application exclusively under the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, CAP 152 Laws of the Federation 1990 which both the trial High Court and the Court of Appeal applied in their Ruling and judgment respectively. (p. 46 E)

STATUTES - Enforceability

2. However, what the lower court and the learned counsel to the respondents failed to realize is the fact that the entire provisions of PART I of the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 of the Laws of the Federation of Nigeria 1990 containing section 4 of the Act required a positive action on the part of the Minister of Justice of the Federation to bring that part of the Act into force.

From the provisions of section 3 of the Act quoted above, it is quite clear that the provisions of Part 1 of the Act remains dormant or inactive until life is breathed into them by an Order promulgated by the Minister who by section 1 of the Act, is the Minister of the Federation charged with responsibility for justice. It is quite clear on the face of the provisions of this Act that no such Order was made by the Minister of

Justice in exercise of his powers under section 3(1) of the Act to bring into life the provisions of Part 1 of the Act. Therefore until then, section 4 of the Act shall not be available to any litigant to support an application to register a foreign judgment within a period of 6 years from the date of the judgment. In this respect, the court below was clearly in error in relying on the provision of section 4 of the Act which is yet to come into force, to allow the respondents' appeal and grant leave for the registration of the foreign judgment in favour of them even though the judgment was delivered four years before the date of filing of the application at the trial High Court.
(pp. 47 D/ 48 B)

Stare decisis - Supreme Court

3. It is not at all in doubt that the case of *Macaulay v. R.Z.B. of Austria* (supra) is virtually on all fours with the present case. The foreign judgments involved in both cases were judgments of the High Court of Justice in the United Kingdom. Both cases started at the High Court of Justice of Lagos State, through to the Court of Appeal, Lagos Division and ultimately to this court. The decision of this court in *Macaulay v. R.Z.B. of Austria* (Supra) was that in both statutes, namely, the 1958 Ordinance in section 3(1) and the 1990 Act in Section 10(a), the period prescribed for registering a foreign judgment in Nigeria is twelve months or such longer period as may be allowed by the registering court on application for extension of the prescribed period. I am not at all in doubt that I am bound by that decision which I shall proceed to apply to the present case. See *Rossek v. A.C.B Ltd.* (1993) 8 NWLR (pt. 312) 382. (p. 49 H)

JUDGMENTS - Derailment

4. The court below in its judgment at page 178 of the record of this appeal quite rightly found the state of the law as follows regarding the period of twelve months within which a foreign judgment may be registered-

"In any case section 10 of the Act expressly states that 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 of Nigeria."

With this correct statement of the law on the subject of the registration of foreign judgment by the court below one would have expected that court to proceed and affirm the Ruling of the trial court which refused to register the United Kingdom Foreign Judgment in favour of the respondents because the application to register it was not brought until four years after the date of the judgment. Unfortunately, the court below failed to realize that the provisions of section 4 of the 1990 Act containing the period of six years for the registration of such judgment is yet to come into force in the absence of the Order by the Minister of Justice under section 3 of the Act. Therefore the failure of the court below to apply the provisions of sections 3(1), 9(1) and 10 of the Foreign judgments (Reciprocal Enforcement) Act CAP 152 of the Laws of the Federation of Nigeria 1990 which that court found to have been quite clear, precise and unambiguous requiring only literal interpretation, was responsible for its derailing from the right track it was on in its judgment. (p. 51 C)

Foreign judgment - Registration

5. Returning to the instant case in which the foreign judgment given in favour of the respondents by the High Court of Justice Queens Bench Division Commercial Court, England on 25-5-1990, the application for registration of which was not filed in the registry of the trial Lagos State High Court of Justice until 18-5-1994, four years after the date of the delivery of that judgment, the outcome is quite obvious. The result of that application of course is as quite rightly found by the trial court. The application to register that judgment not having been brought within the period twelve months from the date of the judgment or such longer period as may be allowed by the registering High Court in Nigeria, was rightly refused and dismissed by the trial Lagos State High Court.

Consequently, the court below was in error in setting aside the Ruling of the trial High Court in allowing the respondents appeal and in granting them leave to register the foreign judgment. (p. 52 A)

APPEALS - Issues - Definition - Sufficiency of lone issue

6. In the light of the conclusion I have arrived at in answering the question raised in the main issue for determination in this appeal, it is quite plain that no useful purpose will be served in delving into the other issues in the appellant's brief of argument which were raised while learned counsel was not aware of the decision of this court in *Macaulay v. R.Z.B. of Austria* (supra).

An issue is the question in dispute between the parties necessary for determination of the suit or appeal. An issue, which is normally raised by way of a question, is usually a proposition of law or fact in dispute between the parties necessary for determination by the court, a determination which will normally affect the result of the suit or appeal.

As the determination of the five issues in the appellant's brief of argument will not affect the result of this appeal, the issues have ceased to be the real issues for determination between the parties in this appeal¹.

This is because courts of law are not established to deal with hypothetical and academic questions. Courts are established to deal with live issues which relate to matters in difference between the parties. (p. 52 D)

E **NOTABLE POINT OF INTEREST**

TOBI JSC

1. Statutes - Courts have no jurisdiction to invoke an unenforceable law

By the decision, the Court of Appeal, with respect, jumped the gun by invoking section 4(1) of the Act, a subsection which is not ripe for application in the light of its inchoate content, vide section 3(1) thereof. This is because the Minister of Justice has not invoked his power to make any order. Courts of law have the jurisdiction to apply existing law which is not subject to an order to make it enforceable. They do not have the jurisdiction to anticipate a law and invoke a law which cannot be enforced, by providing teeth to enforce it. That is the function of the Legislature and courts do not dabble into that legislative terrain. Where a statute confers on a Minister the power to enforce a statute by an order, the statute will not be in force until the Minister has made the order. In view of the fact that by section 3(1) of the Act, the provision of section 4(1) extending the period to six years can only come into operation by an order of the

Minister of Justice, the subsection is not available to the respondents as the Minister has not invoked his powers under sections 3(1) and 9(1). (p. 57 A)

REPRESENTATION

Olumide Sofowara, Esq. for the appellant.

O. Shashore Esq. with him A. Odofin (Miss) for the respondents.

CASES REFERRED TO

Rossek v. A.C.B Ltd. (1993) 8 NWLR (pt. 312) 382

Adesokan v. Adetunji (1994) 5 NWLR (pt.346) 540

Olafisoye v. Federal Republic of Nigeria (2004) 4 NWLR (pt.864) 580 at 681

Adejumo v. Ayantegbe (1989) 3 NWLR (pt. 110) 417

Okoromaka v. Chief Odiri (1995) 7 NWLR (pt.408) 411

Olafisoye v. Federal Republic of Nigeria (2004) 4 NWLR (pt.864) 580 at 641-642

National Insurance Corporation v. Power and Industrial Engineering Co. Ltd (1986) 1 NWLR (pt.14) 1 at 22

Akeredolu v. Akinremi (1986) 2 NWLR (pt. 25) 710 at 728

Ekperokun v. University of Lagos (1986) 4 NWLR (pt.34) 162 at 179

Titiloye v. Olupo (1991) 7 NWLR (pt. 205) 519 at 534

Bamgboye v. University of Ilorin (1999) 10 NWLR (pt.622) 290 at 330

Macaulay v. R.Z.B. of Austria (2003) 18 NWLR (pt.852) 282 at 300

Kotoye v. Saraki (1994) 7 NWLR (Pt.357) 414 at 456

Thema Hyppolite v. Dr. Joseph Egharevba (1998) 11 NWLR (pt.575) 598

STATUTES REFERRED TO

Foreign Judgments (Reciprocal Enforcement) Act, 1961, Cap. 152 LFN 1990, ss. 1, 3(1), 4(1), 6(1), 8, 9 & 10

Reciprocal Enforcement of Judgments Ordinance Cap. 175 LFN 1985, s. 3(1)

LEAD JUDGMENT BY MOHAMMED JSC

This appeal is against the judgment of the Court of Appeal Lagos

Division delivered on 11-12-2000 in which the court reversed the Judgment/Ruling of the trial Lagos State High Court of Justice of 27-6-1996 dismissing a petition to have a judgment obtained in the Queens Bench Division of the High Court of Justice in England on 25-5-1990, registered and enforced as a judgment of the High Court of Justice of Lagos State. The respondents in this appeal were the petitioners/applicants before the trial Lagos State High Court and appellants at the Court below. The appellant on the other hand was the respondent to the petition at the trial High Court and also the respondent to the appeal at the Court below.

By a petition/application dated 16-5-1994 as amended, the respondents at the trial High Court of Justice Lagos State sought for the following relief: -

“An order that the judgment dated the 25th day of May , 1990 WHEREBY it was adjudged that the Respondents do pay the Petitioner £427.77 (Four hundred and twenty seven pounds, seventy seven pence) and US\$92,470.80 (ninety-two thousand, four hundred and seventy Dollars, and eighty cents) or the sterling equivalent at the date of payment with interest to be assessed if not agreed from 30th September, 1987, may be registered as a judgment of the High Court of Lagos State Judicial Division pursuant to the Foreign Judgments/Reciprocal Enforcement Act CAP 152 Laws of the Federation 1990, and enforced against the respondent.”

The appellant as respondent to the said petition filed a counter affidavit dated 2-9-1994. A reply or response in the form of a further affidavit was filed by the petitioners/applicants on 24-10-1994 before the matter was subsequently argued by the parties on both sides before the trial High Court. In his considered Ruling delivered on 27-6-1996, the learned trial judge Olugbani J. dismissed the respondents’ petition/application. Aggrieved by this decision of the trial High Court, the respondents decided to appeal against it to the Court of Appeal Lagos Division. The Court of Appeal after hearing the appeal in a unanimous decision delivered on 11-12-2000, allowed the appeal, set aside the decision of the trial Lagos State High Court and granted leave to the respondents to register and enforce the foreign judgment sought to be registered, as a judgment of the High Court of Lagos State. Obviously not satisfied with the judgment of the

Court of Appeal, the appellant has now appealed to this court.

At the hearing of this appeal on 1-11-2005, learned counsel for the appellant adopted and relied on his appellant’s brief of argument and the appellant’s reply brief. The respondents’ learned counsel on his part adopted and relied on the respondents’ brief of argument and urged this court to disregard the reply brief and dismiss the appeal. In the appellant’s brief of argument, one issue was distilled from each of the five grounds of appeal filed by the appellant. These five issues are:-

“(i) Whether the Appellant herein was not denied a fair hearing by the Court of Appeal when the Court in determining the appeal decided to adopt almost verbatim and virtually in its entirety the contents of the Respondents’ brief of Argument filed in that Court as its judgment without considering the issues raised and the arguments advanced by the Appellant herein in its own brief of Argument.

(ii) Whether in view of the provisions of sections 4(l)(b) and section 6(l)(ii) and 6(2)(a) of the Foreign Judgments (Reciprocal Enforcement) Act Cap. 152 Laws of the Federation of Nigeria 1990 dealing with the jurisdiction of the foreign court, the Court of Appeal was right to have granted the respondents leave to register a judgment which the Foreign Court had no jurisdiction to give against the appellant in this case.

(iii) Flowing from issue (ii) above whether the foreign court had jurisdiction to adjudicate on the matter between the parties considering that the Writ of Summons and points of claim filed in the United Kingdom were not served in accordance with Nigerian Law on the Appellant who is not a company registered in the United Kingdom nor has an agent in the United Kingdom.

(iv) Whether the Court of Appeal (Lagos Division) was right to have given a decision inconsistent with the decision of the Court of Appeal (Benin Division) in the case of THEMA HYPOLITE v. DR. JOSEPH EGHAREVBA (1998) 11 NWLR (pt.575) 598 where the issue of the jurisdiction of the Foreign Court was considered without giving any reason therefor.

(v) Whether the Court of Appeal was right to have held that the trial court was wrong to have looked into the illegality of the purported

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transaction in respect of which the judgment sought to be registered was obtained which transaction ran foul of the Exchange Control Act 1962 which is now Cap 113 of the Laws of the Federation of Nigeria 1990.”

B In the respondents’ brief of argument, five issues as well were posed for determination. I do not find it necessary to state these issues because on close scrutiny, the issues were found to be virtually the same as those issues in the appellant’s brief of argument although slightly differently worded. The real dispute between the parties in this appeal concern C the petition or application of the respondents as judgment creditors in a judgment obtained against the appellant in the High Court of Justice Queens Bench Division, Commercial Court, England. The respondents sought to register the foreign judgment delivered on 25-5-1990 in their favour at the High Court of Lagos State so as to enable them execute that D judgment as the judgment of the High Court of Lagos State in Nigeria. The respondents sought their relief to register the foreign judgment under the Foreign Judgment (Reciprocal Enforcement) Act Cap 152 Laws of the Federation 1990. The learned trial judge in his ruling on the application E delivered on 27-6-1996, refused leave to register the foreign judgment as the judgment of his court, mainly on the ground that application was not filed within the period prescribed under section 3(1) of the Foreign Judgment (Reciprocal & Enforcement) Act under which the application was brought. Part of this ruling which is relevant in this appeal, particularly F with regard to the determination of the real issue for determination in this appeal reads:-

G *“In the present situation if the judgment Exhibit ‘QUILT’ is registrable it has to be registered within twelve months of the date of the judgment or if the court extends time to do so on the application of the party seeking to enforce the judgment. The judgment Exhibit ‘QUILT’ was given on the 25th day of May 1990. The application was filed in the High Court Registry on the 18th day of May, 1994 and came before this court in September 1994. The period for registration had expired in accordance with section 3(1) of the Foreign Judgment (Reciprocal & Enforcement) Act for more than four years before the application for registration was filed in this court.”*

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From this ruling of the trial court, the fact that that court had dismissed the respondents’ application to register the foreign judgment because the application was filed out of time is quite obvious.

The Court of Appeal also on its part in its judgment of 11-12-2000, allowed the respondents’ appeal against the ruling of the trial court refusing to register the foreign judgment and set aside that ruling before B granting the respondents leave to register the foreign judgment and enforce the same as the judgment of the Lagos State High Court. The main reason given by the court below for allowing the appeal is contained at pages 177-178 of the record of this appeal where that court said – C

“It would appear that learned trial judge applied section 3(1) of the Foreign Judgment (Reciprocal Enforcement) Act to the judgment emanating from the High Court of Justice, Queens Bench Division, Commercial Court, England. He however omitted to consider section 4 of D the Act, which by virtue of section 9 of the Act is applicable to judgments from any part of the Common wealth other than Nigeria.

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However, close reading of section 3(1) of the Act will indicate that E the Minister of Justice is empowered to extend the application of Part 1 of the Act to the judgment given in superior courts of foreign country in which substantial reciprocity of treatment will be assured regarding the enforcement in that foreign country of judgments given in superior courts F in Nigeria.

In any case section 10 of the Act expressly states that ‘a judgment given before the commencement of an order under section 3 of this Act applying Part 1 of this Act to the Foreign country, where the judgment was given may be registered within twelve months from the date of judgment G or such longer period as may be allowed by a superior court in Nigeria.’

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It is in the light of this that I find that the lower court was wrong in dismissing the petitioners’ application to register the judgment of the H High Court of Justice, Queens Bench Division, Commercial Court, England made on the 25/5/1990 by applying section 3(1) of the Act.”

Taking into consideration the hub of the real dispute between the parties in this appeal regarding the registration of the foreign judgment

the application to register which the trial court refused to grant while the court below thought otherwise, the main and real issue for determination in this appeal is a lone and single issue. The issue is whether the court below was right having regard to the provisions of sections 3(1) and 10 of the Foreign Judgment (Reciprocal Enforcement) Act CAP 152 of the Laws of the Federation 1990, that the trial court was in error in dismissing the application to register the foreign judgment of the High Court of Justice, Queens Bench Division, Commercial Court, England delivered on 25-5-1990. The step I have taken in formulating the real issue for determination in this appeal has the support of the decisions of this court in *Kotoye v. Saraki* (1994) 7 NWLR (Pt.357) 414 at 456 and *Titilayo v. Olupo* (1991) 7 NWLR (Pt. 205) 519 at 537.

The general submission of the learned counsel to the appellant in the appellant's brief of argument, the appellant's reply brief of argument and oral submission on the day this appeal was heard is that by virtue of section 3(1) of the Reciprocal Enforcement of Judgments Ordinance CAP 175 Laws of the Federation of Nigeria 1958, the judgment sought to be registered must be registered within the period of twelve months. Learned counsel observed that since the judgment sought to be registered was delivered on 25-5-1990 and the respondents did not file their application to have that judgment registered at the registry of the trial High Court until 18-5-1994, the application was incompetent having been filed out of time. Relying on the decision of this court in the recent case *Andrew Mark Macaulay v. Raiffeisen Zentral Bank Osterreich Akiengesell Schaft (R.Z.B.) of Austria* (2003) 18 NWLR (pt.852) 282, which was given when this appeal was awaiting hearing, learned counsel to the appellant submitted that the respondents had only twelve months within which to register their foreign judgment obtained in England on 25-5-1990. Not having filed their application to register that judgment in Nigeria until 18-5-1994, the trial High Court was right in dismissing the application. For this reason, learned counsel urged this court to allow this appeal and restore the judgment of the trial High Court because the court below was in error in setting it aside and in granting the respondents leave to register the foreign judgment.

For the respondents however, it was argued that taking into consideration section 8 of the Foreign Judgment (Reciprocal Enforcement) Act, the court below rightly set aside or reversed the decision of the trial High Court which was predicated on facts not relevant to the issue before it, which issue was simply the registrability of a foreign judgment in terms of whether that judgment was one that met the legal requirements for registration. Counsel pointed out that in considering whether or not to register the foreign judgment, the court is confined to looking into the provisions of sections 4 and 6 of the Foreign Judgments (Reciprocal Enforcement) Act which in section 4 requires only two conditions to be met in considering whether or not to register a foreign judgment namely -

"1. Whether the application for the registration before the court was made within six years after the date of the judgment."

2. Whether the judgment had been wholly satisfied."

As for the provisions of section 6 of the Act, learned counsel explained that the section comes into play only in an application to set aside a foreign judgment which had been registered. Learned counsel therefore maintained that the court below rightly set aside the decision of the trial High Court in allowing the appeal before it and in granting the respondents leave to register the foreign judgment.

In the determination of this main issue, it is necessary first to answer the question regarding the current relevant law applicable to Nigeria governing the registration of foreign judgments for the purpose of enforcement in the country. While the parties in this appeal appeared to have relied exclusively on the provisions of the Foreign Judgment (Reciprocal Enforcement) Act CAP 152 of the Law of the Federation 1990, in pursuing their matters at the trial High Court and the Court of Appeal, it is only on coming to this court on appeal that it dawned on the learned counsel to the appellant that the dispute between the parties is also governed by the provisions of the Reciprocal Enforcement of Judgments Act 1922, CAP 175 Laws of the Federation and Lagos, 1958. The present state of the law as determined by this court on the proceedings for the registration of foreign judgments in this country was stated in the recent decision of this court in the case of *Macaulay v. R.Z.B. of Austria* (2003) 18 NWLR

(pt. 852) 282 at 297-298 where Kalgo JSC stated the law

“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 i 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 promulgations 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.”

In the present case, the foreign judgment which is the subject of dispute between the parties is a judgment of the Queens Bench Division Commercial Court of the High Court of Justice, England in the United Kingdom. The Law applicable to the proceedings for the registration of that 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. It is in fact apparent from the record of the appeal that the learned counsel to the respondents at the trial High Court had an idea of the applicability of the 1958 Ordinance to the respondents application having filed the same under it but gave it a wrong year ‘1990’ instead of ‘1958’. As the learned counsel was not sure of the statute under which the application could have been brought, led to his filling an amended application exclusively under the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, CAP 152 Laws of the Federation 1990 which both the trial High Court and the Court of Appeal applied in their Ruling and judgment respectively.

Next, I shall proceed to examine the applicable Law in order to find the correct period prescribed by the statutes within which an application for the registration of a foreign judgment, particularly a foreign

judgment obtained in England, may be brought before the Nigerian superior courts. The lower court whose judgment now on appeal had found that a judgment of the High Court of Justice England in the United Kingdom delivered four years before filing an application for its registration in Nigeria could be registered under section 4 of the Foreign Judgments (Reciprocal Enforcement) Act 1961 CAP 152 Laws of the Federation of Nigeria 1990. Learned counsel for the respondents had strongly argued that the respondents’ application for registration of the foreign judgment having been filed within 6 years after the date of judgment, had satisfied the main requirement under section 4 of the Act and therefore rightly ordered to be registered by the court below. **However, what the lower court and the learned counsel to the respondents failed to realize is the fact that the entire provisions of PART I of the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 of the Laws of the Federation of Nigeria 1990 containing section 4 of the Act required a positive action on the part of the Minister of Justice of the Federation to bring that part of the Act into force.** The relevant section of the Act in this respect is section 3(1) which states -

“PART 1 - REGISTRATION OF FOREIGN JUDGMENTS

3(1) The Minister of Justice if he is satisfied that, in the event of the benefits conferred by this part of this Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the superior courts in Nigeria, may by order direct-

(a) that this Part of this Act shall extend to that foreign country;

and

(b) that such courts of that foreign country as are specified in the order shall be deemed superior courts of that country for the purposes of this Part of this Act.”

Part I of the Foreign Judgment (Reciprocal Enforcement) Act CAP 152 of the Laws of the Federation 1990, comprises sections 3, 4, 5, 6, 7, 8, 9 and 10. **From the provisions of section 3 of the Act quoted above, it is quite clear that the provisions of Part 1 of the Act remains dormant or inactive until life is breathed into them by an Order promulgated by the Minister who by section 1 of the Act, is the Minister**

of the Federation charged with responsibility for justice. It is quite clear on the face of the provisions of this Act that no such Order was made by the Minister of Justice in exercise of his powers under section 3(1) of the Act to bring into life the provisions of Part 1 of the Act. Therefore until then, section 4 of the Act shall not be available to any litigant to support an application to register a foreign judgment within a period of 6 years from the date of the judgment. In this respect, the court below was clearly in error in relying on the provision of section 4 of the Act which is yet to come into force, to allow the respondents' appeal and grant leave for the registration of the foreign judgment in favour of them even though the judgment was delivered four years before the date of filing of the application at the trial High Court.

The next question to be considered is the appropriate period prescribed under the Law within which a foreign judgment obtained at the High Court of Justice Queens Bench Division Commercial Court, England, could be registered in Nigeria for the purpose of its being enforced. Happily this question has also been fully considered and answered by this court in *Macaulay v. R.Z.B. of Austria* (supra) by Kalgo JSC at pages 298-299 where my learned brother exhaustively dealt with the question as follows:-

"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 of England or Ireland, or in the Court Session in Scotland, the judgment creditor may apply to the 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 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 1 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-

(a) a judgment given before the commencement of an order under section 3 of this Act applying Part 1 of this Act to the foreign country where the judgment was given may be registered within twelve months from the date of the judgment or such longer period as may be allowed by a superior court in Nigeria.'

By this provision, irrespective, regardless or inspite of any other provision in the 1990 Act, any judgment of a foreign country including the United Kingdom to which Part 1 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 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."

It is not at all in doubt that the case of *Macaulay v. R.Z.B. of Austria* (supra) is virtually on all fours with the present case. The foreign judgments involved in both cases were judgments of the High Court of Justice in the United Kingdom. Both cases started at the High Court of Justice of Lagos State, through to the Court of Appeal, Lagos Division and ultimately to this court. The decision of this court in *Macaulay v. R.Z.B. of Austria* (Supra) was that in both statutes, namely, the 1958 Ordinance in section 3(1) and the 1990 Act in Section 10(a), the period prescribed for registering a foreign judgment in Nigeria is twelve months or such longer period as may be allowed by the registering court on application for extension of the prescribed period. I am not at all in doubt that I am bound by that decision which I shall proceed to apply to the present case. See *Rossek v. A.C.B Ltd.* (1993) 8 NWLR (pt. 312) 382; *Adesokan v. Adetunji* (1994) 5 NWLR (pt.346) 540 and *Olafisoye v. Federal Republic of Nigeria* (2004) 4 NWLR

50 Marine Assurance v. Overseas Union Ins. (2006) 1 KLR Mohammed JSC
(pt.864) 580 at 681.

On close examination of section 3(1) of the Reciprocal Enforcement of Judgments Ordinance Cap 175 Laws of the Federation of Nigeria and Lagos, 1958, the picture is quite clear that where a judgment is obtained in the High Court in England, as in the instant case, or Ireland, or in the Court of session in Scotland, the judgment creditor may apply to a High Court in Nigeria within a period of twelve months from the date of the delivery of judgment or such longer period as may be allowed by the court before which the application was filed to have the judgment registered for enforcement in Nigeria. I have also observed that under the 1958 Ordinance, Proclamations were made by the Governor General of Nigeria from 1-12-1922 to 3-2-1927, by which Foreign Judgments that may be registered in Nigeria, apart from the judgments obtained in the United Kingdom, were extended to other countries but the twelve months period prescribed for the registration of the foreign judgments in Nigeria remained unchanged.

However, in 1961 after our independence in Nigeria, the Foreign Judgments (Reciprocal Enforcement) Act was enacted. This statute is now CAP 152 in the Revised Volumes of the Laws of the Federation of Nigeria 1990. Under section 4 of the 1990 Act, the period within which a foreign judgment may be registered in Nigeria was extended to six years from the date of the judgment. However, section 3(1) of this Act had subjected the coming into force of the provisions of Part 1 of the Act which contains section 4(1) of the Act extending the period of registration to six years, to an Order to be made by the Minister of Justice directing the extension of Part 1 of the Act to relevant foreign countries. Section 9 of the new 1990 Act had also unequivocally preserved the effect of the 1958 Reciprocal Enforcement of Judgments Ordinance pending the promulgation of the Order envisaged under section 3(1) of the 1990 Act by the Minister of Justice. In other words the provisions in the 1958 Ordinance relating to the period of twelve months prescribed for the registration of all foreign judgments in Nigeria including those obtained in the United Kingdom, remained intact and therefore still in force. The court below in its judgment at page 178 of the record of this appeal quite rightly found the state of the law as follows regarding the period of twelve months within

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which a foreign judgment may be registered-

“In any case section 10 of the Act expressly states that a judgment given before the commencement of an order under section 3 of this Act applying Part 1 of this Act to the foreign country where the judgment was given may be registered within twelve months from the date of the judgment or such longer period as may be allowed by a superior court of Nigeria.”

With this correct statement of the law on the subject of the registration of foreign judgment by the court below one would have expected that court to proceed and affirm the Ruling of the trial court which refused to register the United Kingdom Foreign Judgment in favour of the respondents because the application to register it was not brought until four years after the date of the judgment. Unfortunately, the court below failed to realize that the provisions of section 4 of the 1990 Act containing the period of six years for the registration of such judgment is yet to come into force in the absence of the Order by the Minister of Justice under section 3 of the Act. Therefore the failure of the court below to apply the provisions of sections 3(1), 9(1) and 10 of the Foreign judgments (Reciprocal Enforcement) Act CAP 152 of the Laws of the Federation of Nigeria 1990 which that court found to have been quite clear, precise and unambiguous requiring only literal interpretation, was responsible for its derailing from the right track it was on in its judgment.

Returning to the instant case in which the foreign judgment given in favour of the respondents by the High Court of Justice Queens Bench Division Commercial Court, England on 25-5-1990, the application for registration of which was not filed in the registry of the trial Lagos State High Court of Justice until 18-5-1994, four years after the date of the delivery of that judgment, the outcome is quite obvious. The result of that application of course is as quite rightly found by the trial court. The application to register that judgment not having been brought within the period twelve months from the date of the judgment or such longer period as may be allowed by the registering High Court in Nigeria, was rightly refused and dismissed by the trial Lagos State High Court.

Consequently, the court below was in error in setting aside the Ruling of the trial High Court in allowing the respondents appeal and in granting them leave to register the foreign judgment.

In the light of the conclusion I have arrived at in answering the question raised in the main issue for determination in this appeal, it is quite plain that no useful purpose will be served in delving into the other issues in the appellant's brief of argument which were raised while learned counsel was not aware of the decision of this court in Macaulay v. R.Z.B. of Austria (supra). Thus, since the foreign judgment which is the central subject of this appeal was not sought to be registered at the trial High Court within the twelve months period prescribed by law and there being no application for extension of time to register it before the trial High Court, the other issues of an alleged denial of fair hearing, whether the foreign court had no jurisdiction to give judgment against the appellant, whether the appellant was not properly served to attend the proceedings of the foreign court, whether the refusal of the court below to be bound by its previous decision and whether the transaction between the parties was illegal having regard to the Exchange Control Act, 1962, have all become rather academic. That is to say the appellant having succeeded in establishing that the respondent's application to register the foreign judgment was filed out of time, the need to rely on the other issues to arrive at the same result is quite unnecessary. **An issue is the question in dispute between the parties necessary for determination of the suit or appeal. An issue, which is normally raised by way of a question, is usually a proposition of law or fact in dispute between the parties necessary for determination by the court, a determination which will normally affect the result of the suit or appeal.** See Adejumo v. Ayan-tegbe (1989) 3 NWLR (pt.110) 417; Okoromaka v. Chief Odiri (1995) 7 NWLR (pt.408) 411 and Olafisoye v. Federal Republic of Nigeria (2004) 4 NWLR (pt.864) 580 at 641-642. **As the determination of the five issues in the appellant's brief of argument will not affect the result of this appeal, the issues have ceased to be the real issues for determination between the parties in this appeal¹. This is because courts of law are not established to deal with hypothetical and academic questions.**

Courts are established to deal with live issues which relate to matters in difference between the parties. See National Insurance Corporation v. Power and Industrial Engineering Co. Ltd (1986) 1 NWLR (pt.14) 1 at 22; Akeredolu v. Akinremi (1986) 2 NWLR (pt. 25) 710 at 728; Ekperokun v. University of Lagos (1986) 4 NWLR (pt.34) 162 at 179; Titiloye v. Olupo (1991) 7 NWLR (pt. 205) 519 at 534; Bamgboye v. University of Ilorin (1999) 10 NWLR (pt.622) 290 at 330 and Macaulay v. R.Z.B. of Austria (2003) 18 NWLR (pt.852) 282 at 300.

In the final analysis this appeal has merit. The appeal is therefore allowed. The judgment of the lower court delivered on 11-12-2000 is set aside. In place of that judgment set aside, there shall be substituted the Ruling of the trial court of 27-6-1996 dismissing the respondents/applicants application.

The appellant is entitled to costs both at the lower court and in this court which I assess at N5000.00 and N10,000.00 respectively.

ONU JSC

I have been privileged to read before now the judgment of my learned brother Mohammed, JSC just delivered. I agree with him that the appeal is meritorious and must therefore succeed.

In consequence, I allow the appeal; set aside the decision of the court below and make the same consequential orders inclusive of costs therein awarded.

KATSINA-ALU JSC

I have read before now in draft the judgment delivered by my learned brother Mohammed JSC in this appeal. I entirely agree with it and, for the reasons which he gives, I too allow the appeal with costs as awarded.

TOBI JSC

This is yet another appeal on the enforcement of foreign judgments

in our court. We did a similar case on 12th December 2003. The judgment of Mohammed, JSC, has understandably made copious reference to it. That is how it should be.

The crux of this appeal is on the statutory period for the registration of foreign judgment in Nigeria, vide section 3 (1) of the Reciprocal Enforcement of Judgments Ordinance, Cap. 175, Laws of the Federation and Lagos, 1958. The judgment of the High Court of Justice, Queens' Bench Division, Commercial Court England was delivered on 25th May, 1990 and the application for the enforcement of the judgment was filed in the High Court Registry of Lagos State on 18th May, 1994. The period is almost four years. As a matter of fact, it is about a week less than four years.

Section 3(1) of 1958 Ordinance reads:

"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 3(1) is in two limbs. The first one is the specific provision of twelve months period within which a foreign judgment can be registered in Nigeria. The second limb is the extension of time by the court. The court will take into consideration the circumstances of the case before extending time beyond the twelve months. The second limb is not applicable in this appeal and so I will not deal with it further.

Section 10 of the Act amplifies the provision of section 3(1) as the section affects or relates to judgment given before the commencement of section 3 of the Act applying Part 1 of the Act to the foreign country where judgment was given. It does not appear that section 10 applies in this appeal.

Section 9(2) of the Foreign Judgment (Reciprocal Enforcement)

Act, Cap.52. Law of the Federation of Nigeria provides for an order to be made under section 3 of the Act extending Part 1 of the Act to any part of Her Majesty's dominion to which the Reciprocal Enforcement of Judgment Ordinance extended. Although section 4(1) of the Act extended the period of registration of foreign judgment to six years, section 3(1) makes section 4(1) applicable only by an order of the Minister of Justice.

The question is, whether such an order has been made by the Minister of Justice. The answer is, no. In the circumstances the applicable law is section 3(1) and not section 4(1). Learned counsel for the respondents merely submitted in paragraph 8.09 of his brief that by virtue of section 9(1) of the Act, the judgment is registrable under section 4(1) of the Act. He did not go further to provide an answer as to whether the provision of section 4(1) has been made applicable by an order of the Minister of Justice, vide section 3(1) thereof. That is the crux of the matter which learned counsel avoided.

The Court of Appeal in its judgment, disagreeing with the Ruling of the learned trial Judge, said at pages 177 to 178:

"It would appear the learned trial Judge applied section 3(1) of the Foreign Judgment (Reciprocal Enforcement) Act to the judgment emanating from the High Court of Justice, Queens Bench Division, Commercial Court, England. He however omitted to consider section 4 of the Act, which by virtue of section 9 of the Act is applicable to judgment from any part of the commonwealth other than Nigeria... However, close reading of S.3(1) of the Act will indicate that the Minister of Justice is empowered to extend the application of Part 1 of the Act to the judgment given in superior courts of any foreign country in which substantial reciprocity of treatment will be assured regarding the enforcement in that foreign country of judgment given in superior courts in Nigeria... If these sections are literally interpreted it will be clear that while section 3(1) of the Act applies to countries other than those of the commonwealth which the minister must extend the application of Part 1 of the Act, section 4, by virtue of section 9(1) is the judgment of the High Court of Justice Queens Bench Division, Commercial Court, England, which does not require the permission of the Minister of Justice... It is in the light of this that I find that the lower court was wrong in dismissing the Petitioners application

to register the judgment of the High Court of Justice, Queens Bench Division, Commercial Court, England made on the 25/5/90 by applying section 3(1) of the Act.”

With the greatest respect, the Court of Appeal got it all wrong.

B The dichotomy or cleavage drawn by the court is not borne out from the provisions of the relevant sections of the Act. I expected the Court of Appeal to deal with the provisions of section 3(1), and 9(2) in the light of section 4(1).

C In my view, the learned trial Judge got it right when he said in his ruling:

“In the present situation if the judgment Exhibit ‘QUILI’ is registrable it has to be registered within twelve months of the date of judgment or if the court extends time to do so on the application of the party seeking to enforce the judgment. The judgment Exhibit QUILI was given on the 25th day of May 1990 The application was filed in the High Court Registry on the 18th day of May 1884 and came before this court in September 1994. The period for registration had expired in accordance with section 3(1) of the Foreign Judgment (Reciprocal and Enforcement) Act for more than D four years before the application for registration was filed in this court.”

E The above is the correct position of the law. The Court of Appeal got the law wrong. By the decision, the Court of Appeal, with respect, jumped the gun by invoking section 4(1) of the Act, a subsection which is F not ripe for application in the light of its inchoate content, vide section 3(1) thereof. This is because the Minister of Justice has not invoked his power to make any order. Courts of law have the jurisdiction to apply existing law which is not subject to an order to make it enforceable. They do not have the jurisdiction to anticipate a law and invoke a law which cannot G be enforced, by providing teeth to enforce it. That is the function of the Legislature and courts do not dabble into that legislative terrain. Where a statute confers on a Minister the power to enforce a statute by an order, the statute will not be in force until the Minister has made the order. In view of the fact that by section 3(1) of the Act, the provision of section H 4(1) extending the period to six years can only come into operation by an order of the Minister of Justice, the subsection is not available to the

respondents as the Minister has not invoked his powers under sections 3(1) and 9(1). It is in the light of the above reasons and the more comprehensive reasons given by my learned brother, Mohammed, JSC that I too dismiss the appeal. I abide by the costs awarded in his judgment.

OGUNTADE JSC

I had the advantage of reading in draft a copy of the lead judgment by my learned brother Mohammed J.S.C. The simple issue calling for a resolution is whether or not the respondents had been time-barred when C on 16-5-94, they brought an application before the High Court, Lagos for an order to register for the purpose of enforcement a judgment given against the appellant in the High Court of Justice, Queens Bench Division, Commercial Court, England on 25-5-90. D

The trial court ruled that the period for the registration of such judgment as provided by section 3(1) of the Foreign Judgment (Reciprocal & Enforcement) Act had expired at the time the application was brought on 16-5-94. Dissatisfied, the respondents appealed to the Court of Appeal, E Lagos Division (hereinafter referred to as the court below). The court below in its judgment on 11-12-2000 allowed the appeal. It reasoned that the said foreign judgment was registrable under section 4 of the same Foreign Judgement (Reciprocal Enforcement Act). F

It seems to me that the court below had in arriving at its decision reversing the trial court failed to bear in mind that there was the need for the Minister of Justice in Nigeria to make an order authorizing the coming into force of the provisions of section 4 of the Act which grants a period of six years in certain cases for the enforcement of foreign judgment. As the G Minister of Justice has not so intervened, the registration of the judgment of the High Court in England for the purpose of enforcement in Nigeria must be done within 12 months, not 6 years as erroneously stated by the court below. H

Happily this case falls into an area where I have for guidance binding judicial authorities. It is for me therefore like treading a path that has been pre-charted. The case in point is Macaulay v. R.Z.B of Austria [2003] 18 NWLR (Pt.852) 282 at 297-298. The respondents had not sought

to register the judgment within 12 months. They had not sought from the High Court an extension of time to register it. Their petition/application was therefore doomed from the beginning.

I would also allow this appeal as in the lead judgment of my learned brother Mohammed J.S.C. I would award the same costs as in the lead judgment.

C

Editor's Note

1 It is hoped that no one would misconstrue the stance of the apex court as demonstrated in this holding as to think that this principle is available to lower courts. The state of the law with respect to lower courts seems to be that they should determine all proper issues presented before them by the plaintiff or appellant seeing that their views may be overruled on appeal. So that if the judgment is overruled, it need not be sent back to the lower court to determine any issue it erroneously ignored. This will make for speedy dispensation of justice. See, *Osasona v. Ajayi* (2004) 5 KLR (pt. 177) 1237, *Adah v. NYSC* (2004) 7 KLR (pts. 184-186) 2249.

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