

**SUPREME COURT OF NIGERIA**

25<sup>TH</sup> MAY 2007 SC. 240\2002

**CORAM:- S. U. ONU, D. MUSDAPHER, S.A. AKINTAN,  
M. MOHAMMED, I. F. OGBUAGU, JJSC**

WITT & BUSCH LIMITED ..... APPELLANT  
AND

DALE POWER SYSTEMS PLC ..... RESPONDENT  
(Formerly Dale Electric of Great  
Britain Limited)

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JUDGMENTS - Foreign judgments - Registration of in Nigeria - Applicable law - Is resolved vide Macaulay case - To be both the 1958 Ordinance and the 1990 Act - Thereby making the judgment of English court - Registerable in this case (H1)

JUDGMENTS - Foreign judgments - Registration of - Supreme Court - Urge on it to depart from its previous decisions - Is not substantiated - And appellant's complaint about applicable statute - Is baseless (H2)

JUDGMENTS - Statutes - Foreign currency - Registration of foreign judgment - Being properly done under applicable statute - Cannot be attacked under inapplicable provision - For being in foreign currency (H3)

JUDGMENTS - Foreign judgments - Appeals - Issues - Jurisdiction - Complaint against an obiter - Is of no value - Facts of this case - Precludes appellant from attacking the foreign court's jurisdiction (H4)

**FACTS**

The judgment debtor/appellant was indebted to the judgment creditor/respondent. It was on 6-6-1997 that the High Court of Justice, Queens Bench Division of England gave judgment in favour of the respondent. Respondent filed an application for the registration of the foreign judg-

ment under the provisions of the Reciprocal Enforcement of Judgment Ordinance Cap 175 LFN, 1958, which was granted by Phillips J. of the Lagos State High Court. Ade-Alabi J. of the same Lagos High Court set aside the registration upon an application by the appellant. Dissatisfied with that ruling, respondent appealed to the Court of Appeal which allowed its appeal by setting aside the said decision of Ade-Alabi J.

Unhappy with the Court of Appeal's decision, appellant has now appealed to the Supreme Court upon 3 grounds of appeal, and raised 3 issues for the determination by the apex court.

**ISSUES FOR DETERMINATION**

*“ 1. Whether the Court of Appeal was right in holding that registration of the Respondent's judgment from the High Court of England was governed by the Reciprocal Enforcement of Judgment Ordinances CAP 175 LFN 1958 as against the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 LFN 1990 (Ground 2)*

*2. Whether the decision of the Court of Appeal is not liable to be set aside for reason that the English Court Judgment was registered in foreign currency and not Nigerian Naira contrary to the provisions of Section 4(3) of the 1990 Act (Ground 1).*

*3. Whether the Court of Appeal is correct in holding that by participating in the proceedings before the English High Court the Appellant lost its right to challenge the subject matter jurisdiction of the English Court (Ground 3).”*

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

***Foreign judgments - Registration of in Nigeria***

1. In resolving the first issue arising for determination in this appeal on the law applicable to the application for registration and enforcement of foreign judgments, in Nigeria, particularly foreign judgments obtained from the High Court of Justice, Queens Bench Division in England, I entirely agree with the learned Counsel to the Respondent that the dispute in the applicable law has long been put to rest by the decision of this Court in *Macaulay v. R. Z. B. of Austria* (2003) 18 N.W.L.R. (PT. 852) 282 at 296 where Kalgo, JSC answered the question as follows

*“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 Enforcement) Act, CAP 152, laws of the Federation 1990.*

*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 Section 5 of the Ordinance before the coming into force of the 1990 Act.”*

Since the judgment in dispute between the parties in the present case was obtained from the United Kingdom, in addition to being registrable under the 1958 Ordinance which is still applicable in Nigeria, it is also registrable under the 1990 Act where Section 10(a) provides for interim registration of such judgment pending the coming into force of the Order by the Minister of Justice directing the application of Part 1 of the Act to the United Kingdom and other countries to be specified in the Order.

The decision in *Macaulay v. R. Z. B. of Austria* (supra) was applied in the recent decision of this Court in *Marine & General Assurance Company Plc. v. Overseas Union Insurance Ltd & Ors.* (2006) 4 N.W.L.R. (PT. 971) 622. Applying these decisions to the present case, the Court below was indeed right in holding that the 1958 Ordinance was applicable to the registration of the judgment obtained by the Respondent against the Appellant from the High Court of Justice, Queens Bench Division of England. (pp. 2218 C/2219 D)

***Supreme Court - Urge on it to depart from its previous decisions***

2. On the question of the Appellant’s plea for this Court to depart from those judgments, although the Appellant had cited authorities in support

of the fact that this Court can depart from its previous decisions based on grounds of inconsistency with the constitution, erroneous in law, per incuriam or may occasion miscarriage of justice or perpetuate injustice, strangely enough no attempt was made by the Appellant to specifically tie the decisions in those cases to the identified grounds for departing from them in the present case. I say no more. In any case since both the 1958 Ordinance in Section 3(1) and the 1990 Act in Section 10(a) have made or contain identical provision for the registration of the foreign judgment in the present case within twelve months after the date of the delivery thereof and taking into consideration that the judgment in question was registered within the prescribed period as prescribed under both applicable statutes, the complaint of the Appellant of which of the two statutes is applicable is neither here nor there. (p. 2219 H)

***Statutes - Foreign currency***

3. The Respondent being fully aware that the provisions of Part I of the Act have not been brought into operation by an Order of the Minister of Justice, did not bring its application for the registration of the foreign Judgment in its favour under Section 4 of the Act. The Appellant therefore cannot hide under the Section to attack the registration of the Respondent's foreign Judgment registered in foreign currency. In other words until the provisions of Section 4 of the 1990 Act comes into force in accordance with Section 3 of the same Act, there is no restriction for any superior Court in Nigeria to register a foreign Judgment in foreign currency. For this reason, the Respondent's foreign Judgment of the High Court of Justice Queens Bench Division of England registered by the trial Lagos State High Court in Pounds Sterling, was correctly registered in accordance with the law. (p. 2222 E)

***Foreign judgments - Appeals - Issues***

4. Notwithstanding the feeble attempt made by the Appellant in an affidavit evidence at the trial Court to heap up the blame of the failure to raise the issue of jurisdiction of the English High Court before that Court on his learned Counsel who had no slightest opportunity to refute the allega-

tion on a counter affidavit, the Appellant has clearly failed to substantiate its claim that the High Court of Justice of England had no jurisdiction to hear and determine the Respondent's claim leading to the judgment ordered to be registered in Nigeria by the Court below in allowing the Respondent's appeal. In any case the present issue which is a mere complaint against a statement in the lead judgment of the Court below that by participating in the proceedings before the English High Court, the Appellant had lost its right to challenge the jurisdiction of that Court without showing how that statement affected the final decision of the Court below, can hardly be regarded as a real issue for determination in this appeal. In raising this issue, the, Appellant had indeed completely disregarded the finding of the Court below after making the Statement complained of in this issue that the undisputed facts- in the present case cannot permit the Appellant to bring itself within any of the provisions outlined under Section 6(2)(a)(i) to (v) of the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 of the laws of the Federation 1990, under which the Appellant sought to attack the jurisdiction of the English High Court. By this final decision therefore, the Appellant had been clearly allowed by the Court below to raise the issue of the jurisdiction of the English High Court before it although the final decision on the issue was against the Appellant. (p. 2224 B)

## **NOTABLE POINTS OF INTEREST**

### **AKINTAN JSC**

#### *1. Foreign judgment registration - Duty of court*

I will also add that it is not the duty of the court entertaining an application for the registration of a foreign judgment to sit as an appellate court over the foreign judgment. The respondent to the judgment sought to be registered is expected to have exercised its right of appeal under the laws of the foreign country. All that the court to which the application is made needs to do is to ensure that the applicant complies with the requirements of our laws on registration of foreign judgment. I believe that the requirements were met in this case. (p. 2226 E)

**OGBUAGUJSC**

*2. Valid judgment - How properly set aside*

It is now settled firstly, that a judgment or order of a court of competent jurisdiction, remain valid and effective, unless it is set aside by an Appeal Court or by the lower court itself if it found that it acted without jurisdiction.

Secondly, in the absence of Statutory authority or except where the Judgment or order is a nullity, one Judge, has no power, to set aside or vary the order of another Judge of concurrent and co-ordinate jurisdiction. The rationale or reason for this, is because, it is now firmly established that there is only one High Court in a State. (p. 2228 C)

**REPRESENTATION**

Inam A. Wilson for the Appellant

Dr. A. I. Layonu with K. Akanbi for the Respondent

**CASES REFERRED TO**

- Ojiako v. Ogueze (1961) 1 ANLR 58 @ 61  
Williams v. Samuel (1961) ANLR 334 @ 337  
Odiase v. Agbo (1972) 1 ANLR 170 @ 176  
Melifonwu v. Egbiyi (1982) 9 S.C. 145  
Ajao v. Alao (1986) 5 NWLR 802 @ 823  
Amanabu v. Okafor (1966) 1 ANLR 205 @ 207  
Okorodudu v. Ajuetani (1967) NMLR 282 @ 283  
Akporeue & anor. v. Okei (1973) 12 S.C. 137  
Uku v. Okumagba (1974) 1 ANLR (Pt.1) 475  
Wimpey (Nig.) Ltd. & anor. v. Alhaji Balogun (1986) 3 NWLR (Pt.28) 324 @ 331  
Orthopaedic Hospital Management Board v. B. B. Apugo & Sons Ltd. (1990) 1 NWLR (Pt.129) 652 @ 657 C.A  
Marine & General Assurance Company Plc. v. Overseas Union Insurance Ltd & Ors. (2006) 4 N.W.L.R. (PT. 971) 622  
Macaulay v. R. Z. B. of Austria (2003) 18 N.W.L.R. (PT. 852) 282 at 296

Bamaiyi v. Attorney-General of the Federation (2001) N.W.L.R. (PT. 727) 468 at 497

Union Bank of Nigeria Plc. v. Eskal Paints Nigeria Limited (1997) 8 N.W.L.R. (PT. 515) 157

B

### **STATUTES REFERRED TO**

Foreign Judgments (Reciprocal Enforcements) Act Laws of the Federation of Nigeria, 1990 ss. 3(1), 4, 6 & 10

Revised Edition (Laws of the Federation of Nigeria) Act No. 21 Of 1990 ss. 3(2), 9 C

Reciprocal Enforcement of Judgments Act Cap. 175 Laws of the Federation of Nigeria, 1958 s. 3(1)

### **LEAD JUDGMENT BY MOHAMMED JSC**

D

This is an appeal against the judgment of the Court of Appeal Lagos Division delivered on 30 May, 2000, in which that Court reversed the decision of the High Court of Justice of Lagos State delivered by Ade-Alabi J. (as he then was) on 30<sup>th</sup> October, 1998, setting aside the order of the same High Court of 13<sup>th</sup> October, 1997 by Phillips J. registering a foreign judgment of the High Court of Justice, Queens Bench Division in England dated 6<sup>th</sup> June, 1997, in favour of the Respondent in the present appeal. The Respondent as a judgment creditor, brought its application for the registration of the foreign judgment under the provisions of the Reciprocal Enforcement of Judgment Ordinance CAP 175 of the Laws of the Federation of Nigeria, 1958. The application was heard and granted by Phillips J. who in his order, gave the Appellant in the present appeal, which was the judgment debtor in the Application, 14 days from the date of service of the notice of the order on it, to apply to set aside the registration of the foreign judgment. However, Appellant/Judgment Debtor did not file its application to set aside the registration of the foreign judgment until 23<sup>rd</sup> June 1998. The application was heard on 18<sup>th</sup> September, 1998 and in a considered ruling delivered by Ade-Alabi J. (as he then was) on 30<sup>th</sup> October, 1998, the application to set aside the registration of the foreign judgment was granted. E F G H

Dissatisfied with the ruling, the judgment creditor now Respondent, appealed against it to the Court of Appeal Lagos Division which after hearing the appeal, in its judgment delivered on 30<sup>th</sup> May, 2000, allowed the appeal, set aside the decision of Ade-Alabi J. (as he then was) B of the trial High Court setting aside the registration of the foreign judgment and restored the ruling of Phillips J. of the same High Court which ordered the registration of the foreign judgment in favour of the Respondent.

C The Appellant which is unhappy with the decision of the Court of Appeal, has now appealed to this Court. The Appellant's amended notice of appeal dated and filed on 25<sup>th</sup> March, 2003, contains three grounds of appeal from which the following three issues for determination were distilled in the Appellant's amended Appellant's brief of argument.

D " 1. Whether the Court of Appeal was right in holding that registration of the Respondent's judgment from the High Court of England was governed by the Reciprocal

Enforcement of Judgment Ordinances CAP 175 LFN 1958 as E against the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 LFN 1990 (Ground 2)

2. Whether the decision of the Court of Appeal is not liable to be set aside for reason that the English Court Judgment was registered in F foreign currency and not Nigerian Naira contrary to the provisions of Section 4(3) of the 1990 Act (Ground 1).

3. Whether the Court of Appeal is correct in holding that by participating in the proceedings before the English High Court the Appellant lost its right to challenge the subject matter jurisdiction of the English G Court (Ground 3)."

However, in the Respondent's brief of argument filed on 1<sup>st</sup> September, 2006, the two issues identified for determination are

H "i. *Whether or not the Reciprocal Enforcement of Judgment Ordinance, CAP 175 Laws of Federation of Nigeria 1958*

*"The 1922 Ordinance' is the applicable law to the registration in Nigeria of foreign judgments obtained from the High Court of Justice of England.*



*ii. Whether the Court of Appeal was correct in its holding that the English High Court of Justice had jurisdiction to hear the matter.”*

The issues as formulated in the Appellant’s brief of argument clearly arose from the three grounds of appeal filed by the Appellant. These are therefore the issues falling for determination in this appeal. B

The first issue is whether the Court of Appeal was right in holding that registration of the Respondent’s judgment from the High Court of England was governed by the Reciprocal Enforcement of Judgment Ordinance CAP 175 Laws of the Federation of Nigeria 1958 as against the foreign judgment (Reciprocal Enforcement) Act CAP 152 Laws of the Federation of Nigeria 1990. Citing the case of *Ibidapo v. Lufthansa Airlines* (1997) 4 N.W.L.R. (PT. 498) 124 at 159 - 160H, learned Appellant’s Counsel concedes that the fact that an enactment is omitted from the Revised laws of the Federation does not affect its subsistence and validity by virtue of Section 3(2) of the Revised Edition (Laws of the Federation of Nigeria) Act No. 21 of 1990, he nevertheless submitted that the 1958 Ordinance has, been repealed in part or made of limited application by the express terms of the 1990 Act. Learned Counsel took time to analyze the provision of this 1990 Act, particularly Sections 3 and 9 thereof and argued that although the recent decision of this Court in *Macaulay v. R. Z. B. Austria* (2003) 18 N.W.L.R. (PT. 852) 282, relied upon by the Respondent is that the Reciprocal Enforcement of Judgment Ordinance of 1958 is the law applicable to the registration and enforcement in Nigeria of a judgment obtained in the United Kingdom and not the Foreign Judgments (Reciprocal Enforcement) Act 1990, nevertheless learned Counsel urged this Court to depart from this decision upon the principles stated in *Odi v. Osafire* (1985) 1 N.W.L.R. (PT. 1) 17 at 34 - 35; 37 - 39; 46 - 48; *Cardoso v. Daniel* (1986) 2 N.W.L.R. (PT. 20)1; *Ifediorah v. Ume* (1988) 2 N.W.L.R. (PT.74) 5 and *Rossek v. ACB Ltd* (1993) 8 N.W.L.R. (PT. 312) 382 at 447. D E F G

For the Respondent however, it was submitted that on a proper H construction and interpretation of the relevant provisions of the Foreign Judgments (Reciprocal Enforcement) Act, CAP 152, Laws of the Federation of Nigeria 1990, which both parties have been referred to as “the

1990 Act,” the irresistible conclusion that will be drawn is that the applicable law to the registration of judgments obtained from the High Court of Justice in England is the Reciprocal Enforcement of Judgments Ordinance, CAP 175 Laws of the Federation of Nigeria, 1958, otherwise referred to as the 1922 Ordinance.’ In support of this argument, learned Counsel to the Respondent relied on the recent decisions of this Court in *Andrew Mark Macaulay v. Raiffeisen Zentral Bank Österreich Aktiengesellschaft (RZB) of Austria* (2003) 18 N.W.L.R. (PT. 852) 282 and *Marine & General Ass. Company Plc. v. O.U. Insurance Ltd.* (2006) 4 N.W.L.R.. (PT. 971) 622.

**In resolving the first issue arising for determination in this appeal on the law applicable to the application for registration and enforcement of foreign judgments, in Nigeria, particularly foreign judgments obtained from the High Court of Justice, Queens Bench Division in England, I entirely agree with the learned Counsel to the Respondent that the dispute in the applicable law has long been put to rest by the decision of this Court in *Macaulay v. R. Z. B. of Austria* (2003) 18 N.W.L.R. (PT. 852) 282 at 296 where Kalgo, JSC answered the question as follows**

*“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 Enforcement) Act, CAP 152, laws of the Federation 1990.*

*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 Section 5 of the Ordinance before the coming into force of the 1990 Act.”*

Therefore applying the provisions of the 1958 Ordinance to the

foreign judgment of the United Kingdom sought to be registered in that case at the trial High Court, the Court came to the conclusion, that the judgment in question was registrable within 12 months after the date of judgment or any longer period allowed by the registering High Court in Nigeria.

However, the judgment in *Macaulay v. R. Z. B. of Austria* (supra) did not stop on the application of the 1958 Ordinance alone. The judgment also went ahead to consider the relevant provisions of the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 Laws of the Federation 1990 particularly sections 3(1) and 10(a) thereof and came to the conclusion that the 1990 Act is also applicable to the registration of foreign judgments obtained from the United Kingdom in Nigeria, pending the coming into force of Part 1 of the Act upon the extension of its application to the United Kingdom by an Order of the Minister of Justice in exercise of his powers to do so under Section 3 of the Act. **Since the judgment in dispute between the parties in the present case was obtained from the United Kingdom, in addition to being registrable under the 1958 Ordinance which is still applicable in Nigeria, it is also registrable under the 1990 Act where Section 10(a) provides for interim registration of such judgment pending the coming into force of the Order by the Minister of Justice directing the application of Part 1 of the Act to the United Kingdom and other countries to be specified in the Order.**

The decision in *Macaulay v. R. Z. B. of Austria* (supra) was applied in the recent decision of this Court in *Marine & General Assurance Company Plc. v. Overseas Union Insurance Ltd & Ors.* (2006) 4 N.W.L.R. (PT. 971) 622. Applying these decisions to the present case, the Court below was indeed right in holding that the 1958 Ordinance was applicable to the registration of the judgment obtained by the Respondent against the Appellant from the High Court of Justice, Queens Bench Division of England. On the question of the Appellant's plea for this Court to depart, from those judgments, although the Appellant had cited authorities in support of the fact that this Court can depart from its previous decisions

based on grounds of inconsistency with the constitution, erroneous in law, per- incuriam or may occasion miscarriage of justice or perpetuate injustice, strangely enough no attempt was made by the Appellant to specifically tie the decisions in those cases to the identified grounds for departing from them in the present case. I say no more. In any case since both the 1958 Ordinance in Section 3(1) and the 1990 Act in Section 10(a) have made or contain identical provision for the registration of the foreign judgment in the present case within twelve months after the date of the delivery thereof and taking into consideration that the judgment in question was registered within the prescribed period as prescribed under both applicable statutes, the complaint of the Appellant of which of the two statutes is applicable is neither here nor there.

It may be observed here that even the Appellant in its Appellant's reply brief seemed to have agreed that the Respondent's foreign judgment which is of the United Kingdom origin, is registrable under Section 10(1) of the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 of the laws of the Federation 1990. Therefore provided the Appellant itself is satisfied that the judgment was registered within the time prescribed under the 1990 Act, it is baffling to see the basis of the complaint of the Appellant in this issue in insisting that the judgment ought not to have been registered under the 1958 Ordinance which is indeed the applicable law as the registration of the foreign judgments made under Section 10(a) of the 1990 Act are only interim provisions.

The second issue for determination is whether the decision of the Court of Appeal is not liable to be set aside for reason that the English Court judgment was registered in foreign currency and not in Nigerian Naira contrary to the provisions of Section 4(3) of the 1990 Act. Learned Appellant's Counsel referred to the Order of Phillips J. of 13<sup>th</sup> October 1997 registering the Foreign Judgment in foreign currency, namely, the Pounds Sterling which is also reflected in the Notice of Registration of the judgment dated 29<sup>th</sup> October, 1997. By registering the judgment in foreign currency as contended by the learned Counsel, the Respondent and the registering Court had committed fatal mistake fundamentally af-

fecting the registration which is contrary to the requirements of Section 4(3) of the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 Laws of the Federation 1990 which required the judgment to be registered in Naira. Citing and relying on the cases of *Bamaiyi v. Attorney-General of the Federation* (2001) N.W.L.R. (PT. 727) 468 at 497 and *Union Bank of Nigeria Plc. v. Eskal Paints Nigeria Limited* (1997) 8 N.W.L.R. (PT. 515) 157 and *Prospects Textile Mills v. I.C.I. Plc. England* (1996) 6 N.W.L.R. (PT. 457) 668, learned Counsel while conceding that Nigerian Courts have, powers to enter judgments in foreign currency, the same Courts by the provisions of Section 4(3) of the 1990 Act, have no power to register any foreign judgment in Nigeria in foreign currency. Learned Counsel therefore urged this Court to declare null and void and of no effect, the said registration of the foreign judgment in the present case in favour of the Respondent.

In responding to the arguments of the Appellant on this issue, learned Respondent's Counsel pointed out that the provisions of Section 4(3) of the 1990 Act relied upon by the Appellant as not authorizing the registration of the foreign judgment in foreign currency are not applicable because those provision have not come into force in the absence of the Order by the Minister of Justice to bring the provision of Part 1 of the 1990 Act into force. This is in line with the dictum of this Court in *Marine & General Assurance Company Plc. v. Overseas Union Insurance Limited* (supra).

It is quite clear from the provision of Section 3 of the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 of the laws of the Federation 1990 that the provisions of Part 1 of the Act shall come into force by Order of the Minister of Justice which is yet to be promulgated. The relevant parts of this section of the Act are outlined below -

#### 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  
B the Order shall be deemed superior Courts of that Country for the purpose of this Part of this Act. xxxxxxxxxxxxxxxxxxxxxxx

(4) The Minister of Justice may by a subsequent Order vary or  
revoke any order previously made under this Section.

C The provisions of this Section of the Act are quite clear on how  
Part 1 of the Act which includes Section 4 of the Act being relied upon by  
the Appellant shall come into force regarding its application to the foreign  
judgment in the present case sought to be registered for enforcement in  
D Nigeria. Section 4(3) of the Act makes provision for registration of foreign  
judgments to which Part 1 of the Act applies. The relevant part of  
this Section 4(1) reads -

“4(1) A person being a judgment creditor under a judgment to  
which this part of this Act applies, may apply to a superior Court in  
E Nigeria at any time within six years after the date of the judgment xxxxx  
to have the judgment registered in such Court.”

**The Respondent being fully aware that the provisions of Part  
I of the Act have not been brought into operation by an Order of  
F the Minister of Justice, did not bring its application for the registration of the foreign Judgment in its favour under Section 4 of the Act. The Appellant therefore cannot hide under the Section to attack the registration of the Respondent’s foreign Judgment registered in foreign currency. In other words until the provisions of  
G Section 4 of the 1990 Act comes into force in accordance with Section 3 of the same Act, there is no restriction for any superior Court in Nigeria to register a foreign Judgment in foreign currency. For this reason, the Respondent’s foreign Judgment of the High Court  
H of Justice Queens Bench Division of England registered by the trial Lagos State High Court in Pounds Sterling, was correctly registered in accordance with the law.**

The third and last issue for determination is whether the Court of

Appeal is correct in holding that by participating in the proceedings before the English High Court, the Appellant lost its right to challenge the subject matter of jurisdiction of the English Court. The submission of the learned Counsel to the Appellant on this issue is that the statement of the Court below that by participating in the proceedings before the English High Court, the Appellant had lost its right to challenge the jurisdiction of that foreign Court was quite wrong because the Court below, did not give full and proper consideration to the meaning of the expression “voluntarily appearing in the proceedings,” used in Section 6(2)(a)(i) of the 1990 Act. Learned Counsel asserted that the unchallenged affidavit evidence of the Appellant before the trial Court that it gave its Counsel handling the matter in the English High Court instruction to challenge the jurisdiction of that Court but that the Counsel failed to heed to the instruction, was quite enough to afford the Appellant the opportunity to raise the issue before the trial Court especially when the law governing the contract between the parties was Nigerian law and not English law which the High Court of England applied.

The Respondent however contended that the Court below was right in holding that the English High Court had jurisdiction to hear the case between the parties, the Appellant having submitted to the jurisdiction and participated in the proceedings thereof. Learned Counsel maintained that in the absence of any evidence before the trial Court that the Appellant’s Solicitor was ever instructed to challenge the jurisdiction of the English Court, the complaint of the Appellant in the present issue is without any basis whatsoever, more especially when the agreement between the parties had clearly stipulated that the English Courts were to have jurisdiction in the matter.

From the record of this appeal containing the proceedings of the High Court of Justice of England and the two separate proceedings of the High Court of Justice of Lagos State presided, by Phillips J. which granted the Respondent’s application registering its foreign Judgment against the Appellant and the other presided by Ade-Alabi J. (as he then was) which set aside the registration of the same foreign judgment, there is enough evidence showing that the Appellant on its own volition through its learned

Counsel unsuccessfully defended the Respondent's action against it in the English High Court up to the end of the proceedings culminating in the final judgment against it. Further more, the Appellant through its learned Counsel in England also appealed against the foreign judgment, without  
B any complaint on the jurisdiction of the English High Court, prosecuted its appeal again which ended woefully against it. **Notwithstanding the feeble attempt made by the Appellant in an affidavit evidence at the trial Court to heap up the blame of the failure to raise the issue**  
C **of jurisdiction of the English High Court before that Court on his learned Counsel who had no slightest opportunity to refute the allegation on a counter affidavit, the Appellant has clearly failed to substantiate its claim that the High Court of Justice of England had no jurisdiction to hear and determine the Respondent's claim leading to the judgment ordered to be registered in Nigeria by the Court below in allowing the Respondent's appeal. In any case the present issue which is a mere complaint against a statement in the lead judgment of the Court below that by participating in the proceedings before the English High Court, the Appellant had lost its right to challenge the jurisdiction of that Court without showing how that statement affected the final decision of the Court below, can hardly be regarded as a real issue for determination in this appeal.**  
D **In raising this issue, the, Appellant had indeed completely disregarded the finding of the Court below after making the Statement complained of in this issue that the undisputed facts- in the present case cannot permit the Appellant to bring itself within any of the provisions outlined under Section 6(2)(a)(i) to (v) of the Foreign**  
E **Judgments (Reciprocal Enforcement) Act CAP 152 of the laws of the Federation 1990, under which the Appellant sought to attack the jurisdiction of the English High Court. By this final decision therefore, the Appellant had been clearly allowed by the Court below to raise the issue of the jurisdiction of the English High Court before it although the final decision on the issue was against the Appellant.**  
F  
G  
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In the end, all frantic efforts made by the Appellant to challenge



the registration of the judgment of the High Court of Justice, Queens Bench Division of England delivered on 6<sup>th</sup> June, 1997 against it in the High Court of Justice of Lagos State in the three issues raised for determination in this appeal have failed, this appeal must also fail. Accordingly, the appeal is hereby dismissed. The judgment of the Court below delivered on 30<sup>th</sup> May, 2000, is hereby affirmed. B

There shall be N10,000.00 costs to the Respondent against the Appellant.

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**ONU JSC**

Having been privileged to read in draft the leading judgment of my learned brother, Mahmud Mohammed, JSC just delivered, I am in agreement with him that this appeal is devoid of merit and for the reasons given in the leading judgment, I too dismiss the appeal adopt the costs awarded therein. D

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**MUSDAPHER JSC**

I have had the honour to read before now the judgment of my Lord Mohammed JSC just delivered with which I entirely agree. For the same reasons, which I respectfully adopt as mine, I too dismiss the appeal and affirm the decision of the Court below. I abide by the order for costs proposed in the aforesaid judgment. F

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**AKINTAN JSC**

I had the privilege of reading the draft of the lead judgment prepared by my learned brother, Mahmud Mohammed, JSC. All the issues raised in the appeal are well set out and fully discussed in the said judgment. I entirely agree with his reasoning and the conclusions reached therein. The transaction that led to the respondent, a foreign company, instituting the action in a London Court against the appellant arose over the respondent's claim for the cost of generating sets shipped to the H

appellant in Nigeria. The appellant did not deny receiving the generating sets and the London Court entered judgment in favour of the respondent. The present case arose over the respondent's effort at registering the judgment in Nigeria so that it could be enforced against the appellant, a Nigerian company based in Lagos, Nigeria.

The respondent brought its application to have the judgment registered in Nigeria under section 3 (1) of the *Reciprocal Enforcement of Judgment Ordinance*, Cap. 175, Law of Nigeria 1958 and the Rules of Court made thereunder. All the relevant documents, including the judgment sought to be registered, were exhibited along with the affidavit filed in support of the application. The application was granted by Phillips, J. of Ikeja High Court of Lagos State Judiciary in the ruling delivered on 13<sup>th</sup> October, 1997 in Suit No. ID/595m/97. But the said ruling was set aside by Alabi, J. of the same court upon an application to that effect by the appellant. The respondent's appeal to the Court below was allowed and the ruling of Phillips J. was restored. The present appeal is from the judgment of the Court of Appeal in the matter.

As I have stated earlier above, I entirely agree with the statement of the law as declared in the lead judgment, particularly on the point that section 3 (1) of the *Reciprocal Enforcement of Judgment Ordinance* was applicable to the case. I will also add that it is not the duty of the court entertaining an application for the registration of a foreign judgment to sit as an appellate court over the foreign judgment. The respondent to the judgment sought to be registered is expected to have exercised its right of appeal under the laws of the foreign country. All that the court to which the application is made needs to do is to ensure that the applicant complies with the requirements of our laws on registration of foreign judgment. I believe that the requirements were met in this case.

For the reasons given above and the fuller reasons given in the lead judgment which I also adopt, I also dismiss the appeal with =N= H 10,000 costs in favour of the respondent.

### OGBUAGU JSC

I had the privilege of reading before now, the lead Judgment of my learned brother, Mohammed, JSC. I agree with his reasoning and conclusion that the appeal fails. I will however, make my own contribution. B

I note that the Respondent, as a Judgment Creditor, applied to the High Court of Lagos for the registration of the Foreign Judgment in his favour, under the Reciprocal Enforcement of Judgment Ordinance Cap. 175 of the Laws of the Federation of Nigeria, 1958. The application was heard and granted by Phillips, J. on 13<sup>th</sup> October, 1997, registering the said foreign Judgment of the High Court of Justice, Queens Bench Division in England dated 6th June, 1997. In granting the said application, the learned Judge in his/her order, gave the Appellant fourteen (14) days from the date of service of the said order on it, to apply to set aside the said registration of the said Foreign Judgment. I note that the Appellant/ Judgment Debtor, filed his application to set aside the said registration, on 23<sup>rd</sup> June, 1998 - i.e. a period of over eight (8) months. This undoubtedly, was filed out of time of the period so granted by the said High Court C presided over by Phillips, J. I also note, that there was no application for an extension of time by the Appellant to so file the said application. The said application was heard by the same High Court of Lagos this time, presided over by Ade-Alabi, J. (as he then was) on 30<sup>th</sup> October, 1998. D The learned Judge, set aside the said order of registration granted by Phillips, J. I note that Ade-Alabi, J. never stated that his learned brother, had no jurisdiction to make the said order registering the said Foreign Judgment or that the said order was a nullity. E

I note that the issue of bringing the said application outside the time/period so given, was raised at page 55 of the Records before Ade-Alabi, J. (as he then was) by the learned counsel for the Respondent. The court below at page 67 of the said Records, inter alia, stated as follows: F

“..... The lower court in my view was right in its ruling by H simply ignoring a submission which lacked the necessary evidential support to succeed”,

It predicated the above statement on the ground that,

*“ There was a vital link missing from the argument of counsel. He should have deposed on oath the date of service of the ex parte order on the Respondent. As there was no evidence before the lower court as to the date the ex parte order was served on the Respondent, it was impossible to assert categorically that the Respondent brought this application late..... ”.*

However, since there is no appeal against the said finding of the court below and the issue has not been raised by the Respondent in this Court, I say no more about it.

It is now settled firstly, that a judgment or order of a court of competent jurisdiction, remain valid and effective, unless it is set aside by an Appeal Court or by the lower court itself if it found that it acted without jurisdiction. See the cases of Ojiako v. Ogueze (1961) 1 ANLR 58 @ 61; Williams v. Samuel (1961) ANLR 334 @ 337; Odiase v. Agbo (1972) 1 ANLR 170 @ 176; Melifonwu v. Egbiyi (1982) 9 S.C. 145; Ajao v. Alao (1986) 5 NWLR 802 @ 823 and many others.

Secondly, in the absence of Statutory authority or except where the Judgment or order is a nullity, one Judge, has no power, to set aside or vary the order of another Judge of concurrent and co-ordinate jurisdiction. See the cases of Amanabu v. Okafor (1966) 1 ANLR 205 @ 207; Okorodudu v. Ajuetani (1967) NMLR 282 @ 283; Akporue & anor. v. Okei (1973) 12 S.C. 137; Uku v. Okumagba (1974) 1 ANLR (Pt.1) 475; Wimpey (Nig.) Ltd. & anor. v. Alhaji Balogun (1986) 3 NWLR (Pt.28) 324 @ 331 and Orthopaedic Hospital Management Board v. B. B. Apugo & Sons Ltd. (1990) 1 NWLR (Pt.129) 652 @ 657 C.A. just to mention but a few. The rationale or reason for this, is because, it is now firmly established that there is only one High Court in a State. See the cases of Skenconsult (Nig.) Ltd. & anor. v. Ukey (1981) 1 S.C. 6 @ 39 and S. O. Ukpai v. U. O. Okoro & ors. (1983) S.C. 231 @ 246.

I note that the Court of Appeal (hereinafter called the “ *the court below* ”) - per Oguntade, JCA, (as he then was) at page 68 of the Record stated inter alia, as follows:

*“I am not unaware of the general position of the Law to the effect that a court of co-ordinate jurisdiction has no jurisdiction to set aside the*

*Judgment of another court of similar Jurisdiction. But where an order of a court is a nullity, such an order would be set aside by another court of similar jurisdiction without much ado. See the case of Skenconsult Nig. Ltd. vs. Ukey (1981) 1 S.C page 6”.*

I agree and have stated so earlier in this Judgment. His Lordship B continued at pages 68 and 69 thereof and I agree, as follows

*“In the above passage the lower court would appear to have considered the order of Phillips J. a nullity not because the application made did not comply with the technical requirements of Cap. 152, Laws of the Federation 1990 but because the appellant applied for the registration of the English Judgment under the wrong law. The lower court did not hold that the application would have failed to sail through if it had been brought under Cap. 152 Laws of the (sic) Federation, 1990. Clearly in my view, the lower court was in error. In effect, it allowed adherence to technicality to hinder the delivery of justice”.* C D

He referred to the case of Folabi v. Folabi (1976) 9-10 S.C. 1 @ 13-14 - per Fatayi -Williams, JSC, (as he then was) part of the decision, he reproduced, (it is also reported in (1976) (1) NMLR 169. See also per Bairaman, F.J. in the case of Fajinmi v. The Speaker, Western House of Assembly (1962) 1 ANLR 210 and per Karibi-Whyte, JSC, in the case of Obonhense v. Erhahon (1993) 7 SCNJ. (Pt.II) 479 @ 493 stating that the principle, is founded on justice and commonsense. But that in order to benefit from the principle, the facts relied upon, must support the correct law to be applied. In other words, where a court has jurisdiction to make an order, the fact that the power of the court, is invoked under a wrong law or Rule of Court, is no reason, for not making the order or where it is made, it is no reason for setting it aside. See also the cases of Salawu Oke & ors. v. Musili Aiyedun & anor. (1986) 2 NWLR (Pt.23) 548; (1986) 4 S.C. 61 @ 68 and Dr. Maja v. Mr. Costa Samouris (2002) 3 SCNJ. 29 @50. In view of the above settled principle of law, this appeal fails. Now, in respect of which is the applicable law, this Court - per H Kalgo, JSC, in the case of Macaulay v. Raiffezen Zentral Bank Osterreich & anor. (2003) 18 NWLR (Pt.852) 282 @ 297-298, 301-303; which is also reported in (2003) 12 SCNJ. 97; (2003) 12 S.C. (Pt.2)22 also cited

and relied on by the Respondent in its supplementary list of Authorities, held in effect, that the applicable law, is Reciprocal Enforcement of Judgments Act, Cap. 175, Laws of the Federation, 1958. It referred to Sections 3(1) and 10 (a) of the said Act. I note at page 23 of the Records, B that Phillips, J. granted the said registration, pursuant to the above Act.

The court below stated at page 69 of the Records that the learned Judge from an analysis of the provisions of Cap. 152 of the 1990 Laws of the Federation, was of the view that Cap. 175 of the 1958 Laws of the Federation, was inapplicable. It referred to the decision of Ayoola, JCA C (as he then was) in the case of *The Mercantile Group (Europe) A-G v. Victor Aiyela & ors.* CA/L/348/92 delivered on 1<sup>st</sup> July, 1996 (unreported) where the following appear:

*“what seems manifest from its provisions is that they had saved D the Reciprocal Enforcement Ordinance from extinction. A statute whose continued operation an existing law has recognized cannot be said to have ceased to exist ..... In my Judgment having regard to the circumstances in which the Ordinance (the 1922 Ordinance) has been E omitted from the Revised Edition, the purpose which the Revised Edition itself was supposed to serve as conclusive evidence of the authenticity of each enactment contained therein and the reference to an implied saving of the Ordinance by Cap 152 the conclusion that is reasonable is that, F that ordinance had not ceased to exist and on that ground alone it is the applicable statute”.*

*[the underlining mine]*

It then at page 70 of the Records, stated inter alia, as follows:

*“I respectfully agree with the above views and come to the conclusion that Cap 175 of the 1958 Laws of the Federation is applicable to this case.....”.* G

I also agree. As a matter of fact, the above case, was also referred to and relied on by Uwaifo, JSC in his concurring Judgment in *Macaulay H v. R.Z.B. Austra* (supra) which he also reproduced at pages 302-303 of the NWLR, and at page 303 stated inter alia, as follows:

*“ The above is a correct exposition of the law as regards the two enactments concerned (i.e. the Foreign Judgments (Reciprocal Enforce-*

ments) Act Cap. 175 of 1958 and of Cap. 152 of 1861 Laws of the Federation of Nigeria). 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.....” B

Kalgo, JSC, in his leading Judgment at pages 297 to 298, stated also that the 1958 Ordinance, was promulgated as No...8 of 1922 to facilitate the reciprocal enforcement of judgment obtained in Nigeria and in the United Kingdom and other parts of Her Majesty’s dominions and territories under Her Majesty’s protection. That it came into operation on 19<sup>th</sup> January, 1922. That there is no doubt therefore that it applies to all judgments of the Superior Courts obtained in the United Kingdom. That the 1958 Ordinance, not having been repealed by the 1990 Act, still applies to the United Kingdom. That there is no doubt that the judgment in question, was given by a High Court in the United Kingdom and therefore, the provisions of the 1958 Ordinance, fully apply to it. C D

As a matter of fact, this Court, in the recent case of *Marine & General Assurance Co. PLC v. Overseas Union Insurance (not Assurance as appears in the Respondent’s Brief )Ltd. & 7 ors. (2006) 4 NWLR (Pt 971) 622 @ 641-642, 646; (2006) 1 SCNJ. 291 @ 304; (2006) 1 S.C. (Pt.II) 124 @ 132-133* - per Mohammed, JSC, applied and followed *Macaulay v. R.Z.B. Austria* (supra). E F

In the instant case, it is not in dispute that the said Judgment registered by the Order of Phillips, J, was given by the High Court of the Queens Bench Division in the England, United Kingdom, I have gone this far because, His Lordship Ade-Alabi, J. (as he then was), noted at page 53 of the Records, that the real question to be determined, was the proper or applicable Law under which the said foreign judgment could be registered in Nigeria. He read under what applicable law his colleague Phillips, J, ordered the registration and rather than refuse jurisdiction to entertain the said motion to set aside the said order, instead, sat on appeal over the decision of the same High Court as himself. Worse still, he granted the application, relying, with respect, on his pontification on what he termed reason of against “Public Policy” which he held that the judgment of the G H

English Court, could not, be registered in Nigeria and therefore, stated:

*“I hold that it is against Public Policy to allow the Foreign Judgment to be enforced in Nigeria”.*

As rightly stated by the court below at pages 71 and 72 of the  
B Records, inter alia, as follows:

*“The unchallenged evidence available was that the defendant submitted to the English Court which gave the judgment the subject-matter of this matter. When the judgment was given against the defendant, it went on an appeal against it and lost. The defendant never contested the jurisdiction of the English Court..... if the respondent’s Solicitors in England failed to object to the jurisdiction of the English Court, that would not detract, from the fact that the respondent had voluntarily submitted to the jurisdiction of the Court In England. It is sufficient that the facts in the case fall within any of the provisions of Section 6(2) (a) (i) to (v) of Cap. 152. That being the position it was no longer open to the respondent before the lower court to contend that the original court in England had no jurisdiction “.*

E [the underlining mine]

I add that I cannot fault the above findings and holding. In respect of Issue 2 of the Appellant, it has now been firmly settled that a Nigerian Court, can make an award in foreign currency. See the cases of Broadline Enterprises Ltd, v. Monterey Maritime Corporation (1995) 9 NWLR (Pt. 417) 1; (1995) 10 SCNJ. 1; Mr Mike Momah v. VAB Petroleum Inc. (2000) 2 SCNJ. 2000 @ 217 and Union Bank For Africa PLC v. STL Industries Ltd. (2004) 18 NWLR (Pt.904) 180 CA. just to mention but a few. It follows in my respectful view, that if the above is firmly settled, a  
G Nigerian Court, can register a Judgment of an English Court in foreign currency. My answer therefore, to the issue is that, the decision of the court below, is not liable to be set aside, for reason that the English Court Judgment, was registered in foreign currency and not in Nigerian Naira.  
H The above decisions, were given after the enactment of the Foreign Judgment (Reciprocal Enforcement) Act, Cap: 152 LFN, 1990, So, they put at rest, any imagined/conceived controversy of the power of a Nigerian Court, to so register.



Finally, His Lordship, concluded at page 72 of the Records, thus:

*“In the final conclusion, this appeal succeeds. The order of the lower court setting aside the registration of the Judgment in favour of the appellant in England as ordered by Phillips, J. is set aside. I affirm the order of Phillips J, that the said judgment be registered. The Appellant is entitled to costs in the lower court and this Court which I fix at N2,500.00 and N5,000.00 respectively”.*

I endorse completely and in its entirety, the above. My answers to Issues 1 and 3 of the Appellant and Issues i and ii of the Respondent, are in the Affirmative and in respect of Issue 2 of the Appellant, it is in the Negative. I too dismiss the appeal. I too award N10,000 (ten thousand naira) costs in favour of the Respondent payable to it by the Appellant. If the said judgment has not been registered as ordered by Phillips, J., it should be registered forthwith and immediately enforced.

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