

**SUPREME COURT OF NIGERIA**  
15TH MAY, 2009. SC. 373/2002  
**CORAM:- N. TOBI, G. A. OGUNTADE, M. MOHAMMED,**  
**I. F. OGBUAGU, J. O. OGEBE, JJSC**

GROSVENOR CASINOS LTD. .... APPELLANT  
AND  
GHASSAN HALAOUI ..... RESPONDENT

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JUDGMENTS - Foreign judgments - Enforcement - Applicable law - Where the foreign jurisdiction is the United Kingdom - The applicable law is still the Reciprocal Enforcement of judgment Act (Cap. 175 of 1958) (H1)

JUDGMENTS - Foreign Judgments - Enforcement under s. 3 of the Act - A judgment obtained in England can only be registered - For enforcement in Nigeria - If the judgment debtor had submitted to the jurisdiction of that court in England (H2)

JUDICIAL PRECEDENTS - Distinguishing - Different issues - Case of Dale power Systems Plc - The issues involved in that appeal are not the same as in this appeal (H3)

**FACTS**

The plaintiff/appellant sued the defendant/respondent at the High Court of Justice, Queen's Bench Division in England. The Writ of summons, Statement of Claim and other processes were served by substitution on the respondent in Nigeria. The respondent neither entered appearance to the writ nor defended the suit in any way. Judgment was eventually given to the appellant.

In an effort to execute the judgment, appellant applied, ex parte to the High Court at Ibadan to have the judgment registered which application was granted. Respondent subsequently applied to have the order granting appellant's application set aside but his application was refused. Dissatisfied, respondent appealed to Court of Appeal which allowed the appeal. Aggrieved by the judgment of the Court of Appeal, appellant has now appealed to the Supreme Court against it contending that Court of Appeal misinterpreted the law.

**ISSUE FOR DETERMINATION**

*"Whether or not the court below came to the right conclusion on the interpretation of the applicable law."*

**HELD** (Unanimously dismissing the appeal per **OGUNTADE JSC**)  
**Foreign judgments - Enforcement - Applicable law**

1. It is apposite to mention that the court below and the parties' counsel who appeared before it all assumed that the applicable provision of the Law which called for consideration was Section 6 of the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152 LFN. 1990. This was a mistake. In *Macaulay v. R.Z.B., Austria* (2003) 18 NWLR (Pt.852) 282 at pp. 296-297 this Court per Kalgo J.S.C. examined the applicability of Cap. 152 thus:

*"...The Reciprocal Enforcement of Judgments Act (Cap. 175 of 1958) hereinafter referred to as the 1958 Ordinance, deals inter alia, with the issue of the Registration of judgments obtained in Nigeria and United Kingdom and other parts of Her Majesty's dominions and territories. It is pertinent to observe that the Foreign Judgments (Reciprocal Enforcement) Act (Cap. 152 of 1990) hereinafter referred to as the 1990 Act did not specifically repeal the 1958 Ordinance. This means that it still applies to the United Kingdom and to parts of Her Majesty's dominions to which it was extended by proclamation under S.5 of the Ordinance before the coming into force of the 1990 Act." (pp. 1247 H/1248 B)*

**Foreign Judgments - Enforcement under s. 3 of the Act**

2. In the consideration of this appeal I must apply the relevant provisions of Section 3(2) & (3). Cap 175 of the 1958 Laws of the Federation.

Under section 3 (2)(b) above, a judgment obtained in the High Court in England or Ireland can only be registered in Nigeria for the purpose of enforcement if the judgment debtor voluntarily appears or otherwise agrees to submit to the jurisdiction of that court in England (p. 1250 A/H) .

**JUDICIAL PRECEDENTS - Distinguishing - Different issues**

3. Appellant's counsel further referred us to the case of *Dale Power Systems Plc v. Witt & Busch Ltd.* (2001) 8 N.W.L.R. (Pt. 716) 699.

Incidentally, I wrote the lead judgment in that case. The issues involved in that appeal are not the same as in this one. (p. 1252 B)

### ***NOTABLE POINTS OF INTEREST***

#### ***OGUNTADE JSC***

##### *1. The law on enforcement of foreign judgments needs a reform*

I have no doubt that it is inimical to the interest of trade and commerce if judgments in foreign countries cannot be readily enforced in Nigeria. It is particularly alarming that when in a case like this, a person ordinarily resident in Nigeria obtains a credit in England and in satisfaction issues a cheque which is later dishonoured, the judgment obtained against him cannot be enforced in Nigeria. Under Section 3(2)(b) above, the judgment of a court in England cannot be enforced in Nigeria on the ground that a defendant has not submitted to the jurisdiction of the English court. There is an urgent need to reform our law on the matter. It is an open invitation to fraud and improper conduct. (p. 1251 E)

##### *2. The appeal will still have failed under cap 152, L.FN 1990*

If I had to consider this appeal on the supposition that section 6(2)(a)(i) of the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152 LFN 1990 applied, I would still have affirmed the decision of the court below.

I am satisfied that the court below was right in its decision even if I find the decision harsh in its effect. (p. 1252 F)

#### ***OGBUAGU JSC***

##### *3. Sentiments have no place in our courts*

If I go by *sentiments*, having regard to the facts of this case leading to this appeal and as appear in the lead Judgment of my learned brother, Oguntade, JSC, I may be inclined to allow this appeal. But it is now firmly settled, that sentiments, have no place in our courts including this Court. (p. 1263 F)

##### *4. Not every error in judgment is material*

Although the court below relied on the inapplicable 1990 Act or Law in arriving at its said decision, it is now firmly settled that what an appeal has to declare, is whether the decision of the court below,

was/is right. If the judgment of a court is correct, it is not liable to reversal merely because it was anchored on a wrong reason or law. In other words, a mistake or error in a judgment, is immaterial provided it has not occasioned a miscarriage of justice. It is not every mistake or error in a judgment, that necessarily, determines an appeal in favour of an Appellant. (p. 1264 D)

**REPRESENTATION**

R. A. Oluyede Esq. (Miss E. O. Kamuche with him) for the appellant.  
C Dr. B. A. M. Ajibade, SAN (Mr. C. V. C. Ihekweazu with him) for the respondent.

**CASES REFERRED TO**

Macaulay v. R.Z.B., Austria (2003) 18 NWLR (Pt.852) 282 at pp.  
D 296-297  
Hyppolite Vs. Egharevba (1998) 11 NWLR (Part 575) 598  
Schibsby v. Westenholz & ors. (1861 - 73) All E.R. 988  
Societe Cooperative Sidmetal v. Titan International Ltd. (1966) 1 O.B. 828  
E Sharps Commercials Ltd. v. Gas Turbines Ltd. (1956) NZLR 819  
Dale Power Systems plc, v. Win & Bush Ltd. (2001) 8 NWLR (Pt.716) 699 C.A  
Ezeugo v. Ohanyere (1978) 6-7 S.C. 171 (@ 184  
F Omole & Sons Ltd. v. Adeyemo & 9 ors. (1994) 4 NWLR (Pt.336) 48 C.A  
Orhue v. NEPA (1998) 7 NWLR (Pt.557) 107: (1998) 5 SCNJ. 126 @ 141  
Onajobi v. Olanipekun (1985) 4 S.C. (Pt.2) 156 @ 163  
G Odukwe v. Mrs. Ozunbiyi (1998) 8 NWLR (Pt....) 339 @ 557: (1998) 6 SCNJ. 102 @ 113

**STATUTES REFERRED TO**

H Reciprocal Enforcement of Judgment Act, Cap. 175, L.F.N., 1958, s. 3  
Foreign Judgment (Reciprocal Enforcement) Act, Cap. 152, L.F.N., 1990, ss. 3 & 9

**BOOKREFERRED TO**

Cheshire & North, Private International Law, 10th ed, p. 629

**LEAD JUDGMENT BY OGUNTADE JSC**

The facts surrounding the dispute out of which this appeal arose are simple and straight-forward. The applicable principle of law is however, not entirely free from difficulty. B

The respondent had issued a cheque in favour of the appellant. It was drawn on a bank in the United Kingdom. The cheque was in satisfaction of a debt of £199,711.00. Upon presentation on or about 21-04-93, the cheque was dishonoured. Subsequently and perhaps as a result of a demand for payment by the appellant, the respondent reduced his indebtedness by paying £88,000.00. This left outstanding the sum of £111,711.00. The respondent did not pay the balance. The appellant then issued a writ of summons under the undefended list procedure at the High Court of Justice, Queen's Bench Division in England. The Writ of Summons, statement of claim and other processes were served by substitution on the respondent in Nigeria. The respondent did not enter appearance to the Writ. He did not file a defence either. On 15/06/99, judgment was given against the respondent for £180,530.00 and costs assessed at £718.00. C D E

In its effort to execute the judgment, the appellant upon an *ex-parte* application brought before the High Court, Ibadan (herein-after referred to as the trial court') prayed that the judgment obtained in England be registered. Adio J. (as he then was) heard the application and granted it on 22/11 /99. In reaction, the respondent brought an application before the trial judge that the order registering the judgment be set aside. On 24/2/2000, Adio J. in a ruling refused the prayer that the registration be set aside. In his ruling, he reasoned thus: F G

*"The only argument advanced by the applicant on jurisdiction is that when the defendant was served outside the jurisdiction of Britain, it is bad. I am not persuaded by that argument, the applicant having admitted service should have gone to the venue to challenge the jurisdiction of that court. He did not. Judgment was given against him and he wanted it set aside. H*

*Where jurisdiction is in issue, the burden of establishing that the court has no jurisdiction is upon the party who asserts that the*

*court has no jurisdiction or vice versa. I have no evidence to prove non-jurisdiction."*

The respondent, dissatisfied with the ruling of the trial court brought an appeal against it before the Court of Appeal, Ibadan (hereinafter referred to as 'the court below.'). The court below, in its judgment on 11-06-2002 allowed the appeal. It set aside the order registering the judgment of the English court. Akintan J.C.A. (as he then was) who wrote the lead judgment relied on some foreign judicial authorities and then concluded in these words:

*"The appellant in the instant case, although he was duly served with the processes of the court, he did not enter any appearance and it has not been shown that he was at anytime resident within the jurisdiction of that court or that he had any property there. In the result, the provisions of the afore-mentioned Section 6 of the Act will be applicable to him. He is therefore entitled to have the registration of the judgment made by the lower court to be set aside. The appeal therefore succeeds and the registration of the judgment made by the lower court is set aside. No order on costs is made."*

The appellant in this appeal (i.e. respondent at the court below) was dissatisfied with the judgment of the court below. He has brought a final appeal before this Court. In the appellant's brief filed, the issues for determination in the appeal were identified as the following:

*"(i) Whether the Court of Appeal could validly depart from its judgment in Hyppolite v. Egharevba (1998) 11 NWLR (Part 575) 598 thus over-ruling it by reference to and reliance upon judgments of foreign jurisdictions as it did in this case,*

*(ii) Whether the regime of statutes establishing a link between Nigerian courts and English courts particularly the various High Court Laws and the Evidence Act do not create a special context which neutralize the English Common Law principles of Private International Law, which were relied Upon, in interpreting Section 6 of the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152 LFN 1990 by the Court of Appeal in this case.*

*(iii) Whether faced with the choice between focusing the law pertaining to recognition and Enforcement of Foreign Judgments by Nigerian Courts on "Forum Convenience" or on "Presence and Submission," the Court of Appeal failed to consider the developments in*

*that field thereby erring in Law by reverting to the anachronistic 19th century English Common Law principles of “Presence and Submission” in its interpretation of the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152, LFN 1990.”*

It seems to me, that issue 1 above, under which the appellant’s counsel contends that the court below was in error because it failed to follow the ratio in a case previously decided by it cannot be taken too seriously. The germane issue should have been whether or not the court below came to the right conclusion on the interpretation of the applicable law. The three issues raised for determination boil down to this single issue. It is convenient in any case to give attention to the reasoning of the Court of Appeal in *Hyppolite v. Egharevba* (supra). The facts in the *Hyppolite* case are similar to those in this appeal save that whereas in this case it was the Court of Appeal which set aside the order registering the foreign judgment, whereas it was the High Court that did so in *Hyppolite v. Egharevba* (supra). Another dissimilarity is the fact that the judgment under consideration in the *Hyppolite* case was that of the Superior Court of Suffolk County, Department of the Trial Court of the Commonwealth of Massachusetts U.S.A. whilst that in this case is the judgment of the High Court of Justice, Queen’s Bench Division England. Issue 4 in the *Hyppolite* case was:

*“Whether the learned trial Judge was right in holding that the foreign court lacked jurisdiction to entertain the suit of medical malpractice against the respondent on the ground that the respondent was a non resident having no property in the State of Massachusetts at the time of the institution of the action at the court of the country of the original court.”*

I have no doubt that the facts in the *Hyppolite* case and the current appeal are similar. But the decision of the Court of Appeal in *Hyppolite* case turned on whether or not a foreign judgment which has been registered could be set aside by the same court if the need arises. The central issue in this appeal is whether or not the respondent submitted to the jurisdiction of the High Court in England.

Before I proceed further, ***it is apposite to mention that the court below and the parties’ counsel who appeared before it all assumed that the applicable provision of the Law which called for consideration was Section 6 of the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152 LFN 1990.***

**This was a mistake. In *Macaulay v. R.Z.B., Austria* (2003) 18 NWLR (Pt.852) 282 at pp. 296-297 this Court per Kalgo J.S.C. examined the applicability of Cap. 152 thus:**

B “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. Learned counsel for the parties are also *ad idem* on this.

C ***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***  
D ***(Cap. 152 of 1990) hereinafter referred to as the 1990 Act did not specifically repeal the 1958 Ordinance. This means that it still applies to the United Kingdom and to parts of Her Majesty’s dominions to which it was extended by proclamation under S.5 of the Ordinance before the coming into force***  
E ***of the 1990 Act.”***

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

H Section 9(1) of the 1990 Act provides:

‘This Part of this Act shall apply to any part of the Commonwealth other than Nigeria and to judgments obtained in the courts thereof as it applies to foreign countries and to judgments obtained in the courts of foreign countries, and the Reciprocal Enforcement of

*judgments Ordinance shall cease to have effect except in relation to those parts of Her Majesty's dominions other than Nigeria to which it extended at the date of the commencement of this Act.'*

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

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

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

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

*registered accordingly.”*

Now, ***in the consideration of this appeal I must apply the relevant provisions of Section 3(2) & ( 3). Cap 175 of the 1958 Laws of the Federation.*** The Section provides:

*“(2) No judgment shall be ordered to be registered under this*

B *Ordinance if-*

*(a) the original court acted without jurisdiction; or*

*(b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or*

C *(c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court, and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or*

D *(d) the judgment was obtained by fraud; or*

*(e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal against the judgment; or*

E *(f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.*

*(3) Where a judgment is registered under this Ordinance -*

F *(a) the judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered up on the date of registration in the registering court;*

G *(b) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this Ordinance;*

H *(c) The reasonable costs of an incidental to the Registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.”*

*(underlining mine)*

**Under section 3 (2)(b) above, a judgment obtained in**

***the High Court in England or Ireland can only be registered in Nigeria for the purpose of enforcement if the judgment debtor voluntarily appears or otherwise agrees to submit to the jurisdiction of that court in England.***

The undisputed evidence before the trial court is that the respondent, although served out of jurisdiction with the processes leading to the judgment later registered, never appeared before the English court. He was not represented by counsel. In a blunt language, he just ignored the proceedings against him in the court in England. B

Appellant's counsel has in his brief argued that there was the need to preserve the special link between the Nigerian and English courts as evident in various High Court Laws and the Evidence Act which said special link imposes the necessity to ignore the English Common law principles of Private International Law which were relied upon by the court below. Counsel relied on *Re Duties v. Vidler* (Duties Settlement No, 2) (1951) 1 Ch. 842. He further counseled on the desirability of following the modern trends in various countries where the approach followed is not based on the principle of "presence and submission" but "comity" and its offspring "jurisdictional reciprocity". He called in aid the case of *Brussels (1968)* and *Lugano (1988) Conventions* on jurisdiction and enforcement of judgments in civil and commercial matters. C D E

I have no doubt that it is inimical to the interest of trade and commerce if judgments in foreign countries cannot be readily enforced in Nigeria. It is particularly alarming that when in a case like this, a person ordinarily resident in Nigeria obtains a credit in England and in satisfaction issues a cheque which is later dishonoured, the judgment obtained against him cannot be enforced in Nigeria. Under Section 3(2)(b) above, the judgment of a court in England cannot be enforced in Nigeria on the ground that a defendant has not submitted to the jurisdiction of the English court. There is an urgent need to reform our law on the matter. It is an open invitation to fraud and improper conduct. F G

The learned author of Cheshire and North Private International Law 10th edition at P. 98 discusses the position of the Common Law in England in these words:- H

*"English law stands aloof from this doctrine. It remains staunch by the principle that 'a court has no power to exercise jurisdiction*

over anyone beyond its limits' and insists that no action personam will be against a defendant unless he has been served with a writ while present in England or unless by virtue of some statutory power, notice of the writ has been served on him abroad." Cited in support of the position in the case *Re Busfield* (1886) 32 Ch. D. 123 at p. 131."

There is as yet no amendment of the law in Nigeria to reflect the various developments in the world which recognize the principle of "comity" and jurisdictional reciprocity

***Appellant's counsel further referred us to the case of Dale Power Systems Plc v. Witt & Busch Ltd. (2001) 8 N.W.L.R. (Pt. 716) 699. Incidentally, I wrote the lead judgment in that case. The issues involved in that appeal are not the same as in this one. The court below before finally concluding had discussed the decisions given to similar provisions of the Law thus:***

"It is clear from the above mentioned decisions that the interpretation given to similar provisions as those in section 6 of the Nigerian Act is that a registration of any foreign judgment made under Section 4 of the act will be set aside if the registering court is satisfied that the courts of the country of the original court had no jurisdiction and those courts will be deemed not to have such jurisdiction, if, *inter alia*, the judgment debtor did not submit to the jurisdiction of the court by appearing in the proceedings: See also *Cheshire & North, Private International Law* 10 ed. P. 629 et seq. "

Let me add that if I had to consider this appeal on the supposition that section 6(2)(a)(i) of the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152 LFN 1990 applied, I would still have affirmed the decision of the court below.

I am satisfied that the court below was right in its decision even if I find the decision harsh in its effect. I affirm it and would accordingly dismiss this appeal. I make no order as to costs.

## H **TOBI JSC**

The facts of the case are very well stated by the appellant. I love the chronological sequence and so I will state the facts as contained at page 1 of the appellant's brief.

Sometime in or about 1993 the respondent issued a cheque

drawn on a London Bank to the appellant in England. The cheque upon presentation by the appellant was dishonoured by the respondent's bankers and marked "orders not to pay" on the 21st of April, 1993. Subsequently, the respondent paid part of the value of the cheque leaving a balance of £111,711.00 unpaid as at March, 1999. B

The judgment creditor/appellant issued a writ of summons on the 5th of March 1999 against the judgment debtor/respondent in the High Court of Justice Queens Bench Division England.

Pursuant to Order 11 of the Rules of the Supreme Court of England (RSC) an order for leave to serve the said writ of summons, Statement of Claim and other processes on the respondent outside jurisdiction in Nigeria was duly made by the English court whereupon the processes were duly served personally on the respondent on the 18th of May, 1999 at 4p.m. at his company's office, Khalil & Dibbo Transport Limited, New Garage, Ibadan in Oyo State of Nigeria . C D

At the expiration of the time limited for the respondent to file a defence, and the respondent having failed to do so, the court, upon the application of the appellant, entered judgment in default of defence against the respondent for the total sum including interest of £180,53040 and costs of £713.00. E

On the 22nd of November 1999 the judgment of the English High Court was registered by an Order of the Oyo State of Nigeria High Court of that date as a judgment of the Oyo State High Court pursuant to the Foreign Judgments (Reciprocal Enforcement) Act Cap 152, Laws of the Federation of Nigeria 1990. The respondent unsuccessfully attempted to have the registration set aside on the ground that the English High Court had no jurisdiction. F G

The respondent appealed to the Court of Appeal, Ibadan against the ruling of the Oyo State High Court rejecting respondent's application to set aside the registration of the judgment. The Court of Appeal, Ibadan Division, in its judgment delivered on the 11th day of June 2002 set aside the ruling of the Oyo State High court and set aside the registration of the English judgment by the court. H

This appeal is against the judgment of the Court of Appeal, Ibadan Division, setting aside the registration of the English judgment by the Oyo State Court. Briefs were filed and duly exchanged. The

appellant formulated the following issues for determination of the appeal:

“(i) Whether the Court of Appeal could validly depart from its judgment in *Hyppolite Vs. Egharevba* (1998) 11 NWLR (Part 575) 598 thus over-ruling it, by reference to and reliance upon judgments of foreign jurisdictions, as it did in this case.

(ii) *Whether the regime of statutes establishing a link between Nigerian Courts and English Courts particularly the various High Court Laws and the Evidence Act do not create a special context, which neutralizes the English Common Law principles of Private International Law, which were relied upon in interpreting section 6 of the Foreign Judgments (Reciprocal Enforcement) Act Cap. 152 LFN 1990, by the Court of Appeal in this case,*

(iii) *Whether, faced with the choice between focusing the law pertaining to recognition and Enforcement of Foreign Judgments by Nigerian Courts on “Forum Convenience” or on “Presence and Submission”, the Court of Appeal failed to consider the developments in that field thereby erring in law by reverting to the anachronistic 19th century English Common Law principles of “Presence and Submission” in its interpretation of the Foreign Judgments (Reciprocal Enforcement) Act, Cap 152 LFN 1990.”*

The respondent formulated the following issue for determination of the appeal:

*“Whether the court below properly interpreted and applied the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152 LFN 1990 in light of the existing authorities, on the interpretation of the statute, when it set aside the registration of the judgment of the English High Court in this case on the basis that it had no jurisdiction over the respondent in the circumstances of the case.”*

The appeal dovetails on section 6 of the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152 LFN 1990. The long section reads:

“6.(1) *On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment -*

*(a) shall be set aside if the registering court is satisfied -*

*(i) that the judgment is not a judgment to which this part of this*

*Act applied or was registered in contravention of the foregoing provisions of this Act; or*

*(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or*

*(iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country for the original court) receive notice of those proceedings is sufficient to enable him to defend the proceedings and did not appear; or*

*(iv) that the judgment was obtained by fraud; or*

*(v) that the enforcement of the judgment would be contrary to public policy in Nigeria; or*

*(vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;*

*(b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.*

*(2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of sub section (3) of this section, be deemed to have had jurisdiction-*

*a) in the case of a judgment given in an action in personam —*

*(i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court; or*

*(ii) if the judgment debtor was plaintiff in, or counter claimed in, the proceedings in the original court; or*

*(iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or*

*(iv) if the judgment debtor, being a defendant in the original*

*court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or*

*(v) if the judgment debtor, being a defendant in the original court had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;*

*(b) in the case of judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;*

*(c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or (b) of this subsection, if the jurisdiction of the original court is recognized by the law of the registering court.*

*(3) Notwithstanding anything in sub section (2) of this section, the courts of the country of the original court shall not be deemed to have had jurisdiction -*

*(a) if the subject matter of the proceedings was immovable property outside the country of the original court; or*

*(b) except in the cases mentioned in sub-paragraphs (i), (ii) and (iii) of paragraph (a) and in paragraph (c) of subsection (2) of this section, if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or*

*(c) if the judgment debtor, being a defendant in the original proceedings was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.”*

Dealing with the crux of the matter, the Court of Appeal said at page 125 of the Record:

*“It is clear from the afore-mentioned decisions that the interpretation given to similar provisions as those in section 6 of the Nigerian Act is that a registration of any foreign judgment made under section 4 of the Act will be set aside if the registering court is satisfied*

*that the courts of the country of the original court had no jurisdiction and those courts will be deemed not to have such jurisdiction, if, inter alia, the judgment debtor did not submit to the jurisdiction of the court by appearing in the proceedings: See also Cheshire & North, Private International Law, 10th ed. P. 629 et seq.*

*The appellant in the instant case, although he was duly served with the processes of the court, he did not enter any appearance and it has not been shown that he was at any time resident within the jurisdiction of that court or that he had any property there. In the result the provisions of the afore-mentioned section 6 of the Act, will be applicable to him. He is therefore entitled to have the registration of the judgment made by the lower court to be set aside. The appeal therefore succeeds and the registration of the judgment made by the lower court is set aside."*

I entirely agree with the Court of Appeal because it is a correct interpretation of the section. I cannot put the position better. I therefore, agree with my learned brother, Oguntade JSC that the appeal should be dismissed and I hereby dismiss it. I also make no order as to costs.

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### MOHAMMED JSC

The dispute between the parties that gave rise to the Court proceedings culminating in the present appeal in this Court, began in 1993 when the Respondent issued a cheque drawn on a London Bank to the Appellant in England. Upon presentation of the cheque by the Appellant at the Bank, the cheque was dishonoured. Subsequently, the Respondent managed to pay part of the amount on the dishonoured cheque to the Appellant leaving a balance of £111,711.00, still due to the Appellant. When the Respondent failed to settle this balance, the Appellant instituted an action to recover the same at the High Court of Justice Queen's Bench Division England in March, 1999 when the Respondent had already returned to Nigeria where he was duly served with Court processes by substituted service at his business premises in Ibadan Oyo State of Nigeria. When the Respondent failed to take steps to defend the action, on the application by the Appellant for judgment, the trial High Court of Justice Queen's Bench Division England, entered judgment against the Re-

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spondent in the sum of £180,530.40 with £718.00 as costs. It was this judgment that was registered for execution in Nigeria by the High Court of Justice of Oyo State Ibadan on 22nd November, 1999, under the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 of the Laws of the Federation 1990. The Respondent's application to  
 B set aside the registration of the foreign judgment was refused by the Oyo State High Court. However, the Respondent's appeal to the Court of Appeal was successful when the Court of Appeal Ibadan Division in its judgment given on 11th June, 2002, set aside the registration of the Foreign English Judgment.

C Aggrieved by this judgment, the Appellant has now appealed to this Court on a Notice of Appeal containing three grounds of appeal from which three issues for determination were formulated in the Appellant's brief of argument. In the Respondent's brief of argument, however, only one issue was identified from the three grounds of appeal. Taking into consideration of the undisputed facts of this case which revolve on the registration of a foreign judgment in Nigerian Courts and since the main complaint of the Appellant in this appeal is that the Court of Appeal was wrong in setting aside the  
 E registration of his foreign judgment for execution in Nigeria against the Respondent, I find myself agreeing with the Respondent that there is only one issue for determination in this appeal as identified in the Respondent's brief of argument. In other words the only issue arising  
 F for determination is whether or not in the circumstances of this case, the Court below correctly interpreted and applied the relevant provisions of the Foreign Judgments (Reciprocal Enforcement) Act in setting aside the registration of the Judgment of the High Court of Justice Queen's Bench Division of England, in its judgment of 11th June, 2002, now on appeal.

G It should be noted however, that apart from the Foreign Judgments (Reciprocal Enforcement) Act CAP 152 Laws of the Federation of Nigeria 1990, Section 6 of which was interpreted and applied in the judgment of the Court of Appeal now on appeal, the Reciprocal Enforcement of Judgments Ordinance, CAP 175 Laws of the Federation of Nigeria, 1958, is also still applicable in Nigeria. See Macaulay v. R.Z.B. of Austria (2003) 18 N.W.L.R. (Pt. 852) 282 at 296 where  
 H Kalgo JSC explained the position -

*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 registration of judgments obtained in Nigeria and United Kingdom and other parts of Her Majesty's dominions and territories. It is pertinent to observe that the Foreign Judgments (Reciprocal Enforcement) Act (CAP 152 of 1990) hereinafter referred to as the 1990 Act did not specifically repeal the 1958 Ordinance. This means that it still applies to the United Kingdom and to parts of Her Majesty's dominions to which it was extended by proclamation under Section 5 of the Ordinance before the coming into force of the 1990 Act."*

Taking into consideration that Part I of the Foreign Judgments (Reciprocal Enforcement) Act, CAP 152 of the Laws of the Federation, 1990, comprising Sections' 3, 4, 5, 6, 7, 8, 9 and 10, is to come into force only at the instance of the Minister of Justice by an order issued by him as specified in Section 3 of the Act, and in the absence of this order directing the application of Part I of the Act to the chosen countries specified in the order, the provisions of the earlier 1958 Reciprocal Enforcement of Judgments Act CAP 175, remains applicable to the registration of foreign Judgments in Nigeria, particularly Judgments of the United Kingdom, one of which is the subject, of this appeal. In other words Section 6 of the 1990, Act which was relied upon by the parties at the Courts below and interpreted and applied by the Court of Appeal below in its Judgment, is yet to come into force in the absence of the Order to bring it into force together with the other Sections in Part I of the Act by the Hon. Minister of Justice. This situation makes it necessary to fall back to the 1958 Ordinance to determine whether or not the Foreign Judgment of the Appellant was registrable under that Act. Unlike the 1990 Act which contains provisions in Section 6 for setting aside the registration of a Foreign Judgment already registered by a Court, the 1958 Ordinance merely gives comprehensive conditions to be satisfied before a Foreign Judgment could be registered in Section 3 there-of which states -

3. (1.) *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 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 circumstances of the case it thinks it is just and convenient that the judgment*  
 B *should be enforced in Nigeria, and subject to the provisions of this Ordinance, order the judgment to be registered accordingly.*

*(2.) No judgment shall be ordered to be registered under this Ordinance if-*

C *(a.) the original Court acted without jurisdiction; or*  
*(b.) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original Court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that Court; or*

D *(c) ..... "*

From the undisputed facts of this case, there is no doubt whatsoever that the Respondent judgment debtor in the present case who was neither carrying on business, nor ordinarily resident in the United Kingdom within the jurisdiction of the original Court, nor did he voluntarily appear or otherwise submit to or agree to submit to the jurisdiction of that Court, the trial Oyo State High Court ought not to have registered the Foreign United Kingdom Judgment in Nigeria for execution against the Respondent. On the application of Section  
 E 3(2)(b) of the 1958 Ordinance therefore, the registration of that foreign judgment was rightly set aside, though under inapplicable law,  
 F by the Court below. Thus on the application of the law now in force, I am of the view that the decision of the Court of Appeal now on appeal is quite correct and must be upheld.

G Having had the opportunity before today of reading the judgment of my learned brother Oguntade JSC, I agree with him that the Court of Appeal was right in its decision. Therefore I also dismiss this appeal with no order on costs.

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### **OGBUAGU JSC**

This is an appeal against the decision of the Court of Appeal, Ibadan Division (hereinafter called "the court below"), delivered on 11th June, 2002 setting aside the Ruling of the High Court of Oyo

State sitting at Ibadan - per Adio, J. (as he then was) registering the Judgment of the Queen's Bench Division of the High Court of Justice, London, England.

Dissatisfied with the said decision, the Appellant has appealed to this Court on three grounds of appeal and has also formulated three issues for determination. On his part, the Respondent, has formulated one issue for determination. B

When this appeal came up for hearing on 17th February, 2009, both learned Counsel for the parties, adopted their respective Brief. While the leading learned counsel for the Appellant - Oluyede, Esqr., referred to the book Authority of Cheshire & North Private International Law (which is also cited in the List of Authorities of the Respondent) and he urged the Court to allow the appeal, Dr. Ajibade (SAN) leading counsel for the Respondent, urged the Court to dismiss the appeal. He referred to what he stated was a previous decision of the Court of Appeal in Garba (the parties and citation he did not state). Thereafter, Judgment was reserved till today. C D

I note that this Court, has interpreted the applicable law - i.e. Reciprocal Enforcement of Judgments Ordinance or Act, Cap. 175 of Laws of the Federation, 1958 in the case of Macaulay v. Osterreich Raiffaiscn Zentral Bank & anor. (2003) 18 NWLR (Pt.852) 282 @ 296 - 297 or Macaulay v. RZB of Austria (it is also reported in (2003) 12 SCNJ. 97 - per Kalgo, JSC. Section 3 (2) (a) and (b) of the said Ordinance or Act, provide as follows: E

(2) *No judgment shall be ordered to be registered under this Ordinance if—* F

(a) *the original Court acted without jurisdiction; or*

(b) *The judgment debtor, being a person -who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of the court".* G

This Act, it seems, is still an existing law as it has not been repealed expressly or otherwise, by the Foreign Judgments (Reciprocal Enforcement) Act, Cap. 152 Laws of the Federation of Nigeria, 1990 H the wordings of which in Section 6(2)(a)(i) are substantially the same as in the 1958 Act. It is a Statutory provision which is clear and unambiguous. In such a situation, the duty of the court, is to give effect to the ordinary plain meaning of the words without resorting to any

external aid. See the case of Chief Joseph A. Okotie-Eboh v. Chief James Ehiowo Manager & ors. (2004) 12 SCNJ. 139. So, the question of Common Law, or Evidence Act, with respect, is therefore, of no moment.

It is not in dispute that when the Writ of Summons, Statement of Claim and other processes, were served on the Respondent, he did not file any Notice of Intention to defend the Suit which was filed under the Undefended List and he did not put up appearance during the hearing or trial of the action. In other words, he did not surrender to the jurisdiction of the London/English Court and therefore, that court, could not and cannot, be deemed to have had jurisdiction over the Respondent.

The Respondent, in the court below, cited and relied on some of the decided English authorities in respect of the said English Foreign Judgments (Reciprocal Enforcement) Act 1933 and a decision of the Supreme Court of New Zealand. In the case of Schibsby v Westenholz & ors. (1861 - 73) All E.R. 988, it was held that a judgment obtained in a foreign court in default of appearance, against the defendants who were not subjects of the Foreign State and who also, were not resident there at the time the proceedings were instituted and who also did not own any property in that foreign State, but although the defendants had notice of the said proceedings sufficient for them to have appeared and defend the action, they had no duty, to obey the judgment so, an action to have the judgment enforced, failed. I note however, that this case, was before the 1933 Act.

But in the case of Societe Cooperative Sidmetal v. Titan International Ltd. (1966) 1 O.B. 828, it was held or decided by the Queen's Bench Division of the High Court of Justice, London, England, that a judgment of a Belgian Court given against a defendant resident in England, could not be registered in England under the 1933 Act because, although the defendant, was served with the processes in England, he did not surrender to the jurisdiction of the Belgian Court by voluntarily appearing and participating in the proceedings. It is noted by me that it is the judgment of the same Queen's Bench Division, London, England, that the trial court, held that it is registrable in this country although or notwithstanding that the facts of the case, are on all fours, with the one relating to the Respondent in this ap-

peal.

In the New Zealand case of *Sharps Commercials Ltd. v. Gas Turbines Ltd. (1956) NZLR 819*, the Supreme Court of that country, held that a judgment given by the High Court of Justice in England in an action in personam (as in the instant case leading to this appeal), could not be registered in that Supreme Court because, the judgment debtor - a Company registered in New Zealand, which at no time, had any office or place of business in England, but or although it was served with the Writ, it did not take any part in the proceedings in the said High Court or submit to its jurisdiction or agree in respect of the subject-matter of the proceedings to submit to the judgment of that court, because none of the conditions set out in Section 6(3) of the Reciprocal Enforcement of Judgments Act, 1934 of New Zealand (which is substantially the same with the 1958 Act).

I hold that the court below, rightly in my respectful view, relied on the above cases, because the facts in these cases, were/are on all fours with the facts of the instant case. I hold that the said cases, are and constitute, strong persuasive authority in the interpretation of the 1958 Act, The wordings in the English Act and New Zealand, are substantially the same with the 1958 Act. With respect, it is clear in my mind that the facts of the cases of *Hyppolite v. Dr. Egharevba (1998) 1 NWLR (Pt.575) 598 C.A.* and *Dale Power Systems plc, v. Win & Bush Ltd. (2001) 8 NWLR (Pt. 716) 699 C.A.* cited and relied on by the learned counsel for the Appellant, are not apposite and therefore, inapplicable with the facts in the present case or that of the three cases referred to by me above in this Judgment.

If I go by *sentiments*, having regard to the facts of this case leading to this appeal and as appear in the lead Judgment of my learned brother, Oguntade, JSC, I may be inclined to allow this appeal. But it is now firmly settled, that sentiments, have no place in our courts including this Court. See the cases of *Ezeugo v. Ohanyere (1978) 6-7 S.C. 171 (@ 184: Omole & Sons Ltd. v. Adeyemo & 9 ors. (1994) 4 NWLR (Pt.336) 48 C.A.* and *Orhue v. NEPA (1998) 7 NWLR (Pt.557) 107: (1998) 5 SCNJ. 126 @ 141.*

One thing is clear to me, that the Respondent, for whatever reason best known to him, did not and never submitted himself either personally or through counsel, to the jurisdiction of the English Court.

The court below - per Akintan, JCA (as he then was) at page 125 of the Records, stated that a registration of any foreign judgment made under Section 4 of the 1990 Act, will be set aside, if the said foreign court, had no jurisdiction or deemed not to have such jurisdiction, if inter alia, the judgment debtor, did not submit to the jurisdiction of the trial English Court by voluntarily appearing and participating in the proceedings before that court or that he was resident in or that he owned any property within that jurisdiction. See also *Cheshire & North Private International Law*, 10th Edition page 629, 12th Edition page 346. Although such state of affairs, is pregnant with some disastrous consequences of encouraging crooks and fraudsters, there may be the need for the legislature liaising with the Attorney-General of the Federation and Minister of Justice, to have a look at the 1958 Act and the 1990 Act with a view to effecting an amendment. Until this is done, this Court is bound, to give effect to that Section of the 1958 Act

Although the court below relied on the inapplicable 1990 Act or Law in arriving at its said decision, it is now firmly settled that what an appeal has to declare, is whether the decision of the court below, was/is right. If the judgment of a court is correct, it is not liable to reversal merely because it was anchored on a wrong reason or law. In other words, a mistake or error in a judgment, is immaterial provided it has not occasioned a miscarriage of justice. It is not every mistake or error in a judgment, that necessarily, determines an appeal in favour of an Appellant. See the *Onajobi v. Olanipekun (1985) 4 S.C. (Pt.2) 156 @ 163* and *Odukwe v. Mrs. Ozunbiyi (1998) 8 NWLR (Pt....) 339 @ 557: (1998) 6 SCNJ. 102 @ 113* just to mention a few.

The court below, with respect, was in error, in relying on the 1990 Act instead of the 1958 Ordinance or Act, but such error, has not altered or affected the justice of this instant appeal. I so hold. I therefore, dismiss this appeal.

It is from the foregoing and the reasons and conclusion contained in the lead Judgment of my learned brother, Oguntade, JSC just delivered and which I had the privilege of reading before now and which I agree with, that I find no merit in this appeal and I dismiss it. I abide by the orders in the said lead Judgment including that in respect of costs.

**OGEBE JSC**

I had a preview of the lead judgment of my learned brother Oguntade JSC just delivered and I agree entirely with his reasoning and conclusion.

This is a case in which the respondent is using a loop hole in the Nigeria Law to avoid his international obligation. The Attorney-General of the Federation should take urgent steps to update the law in line with modern trend.

I hereby dismiss the appeal. I make no order as to costs.

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