



# Statutory Nonreciprocal Enforcement of Foreign Judgments in Nigeria: Revisiting Macaulay v. RZB Austria

10 August 2021

## A. Introduction

On Friday, 12 December 2003, the Supreme Court of Nigeria delivered judgment in the case of **Macauley v. RZB Austria**<sup>1</sup>, essentially birthing a new jurisprudence for foreign judgment enforcement proceeding in Nigeria, the statutory nonreciprocal enforcement of foreign judgments. Although the decision has appeared in several well-research legal treatises<sup>2</sup>, it has not been extensively examined for its paradigmatic implication for transnational litigation in the Nigerian legal system.

This article revisits the decision, providing an exposé on the full width of the apex court's decision.

## B. Governing Law on Enforcement of Foreign Judgments in Nigeria

Cross-border enforcement of foreign judgments in civil and commercial matters is a subject of transnational litigation and therefore more suitably governed by international law. It is curious, however, that despite the historical growth in cross-border commercial activities and globalisation, there has not evolved customary rule of international law on enforcement of foreign judgments. Even more curious is the fact that multilateral treaties that were successfully negotiated on the subject<sup>3</sup> have not entered into force, having not received the required number of ratifications by States. The practical implications for commercial parties engaged in cross-border business and who may desire to enforce foreign judgments in Nigeria, like most other countries, is that they would have to do so under the municipal law of the judgment enforcing jurisdiction.

<sup>1</sup> Andre Mark Macauley v. Raiffeisen Zentral Bank Osterreich Akiengesell Schaft (RZB) of Austria [2003] 18 NWLR (Pt. 852) 282  
<https://www.mondaq.com/nigeria/litigation-mediation-arbitration/31865/supreme-court-creates-pitfalls-on-enforcement-of-foreign-judgments-in-nigeria>;  
<https://www.templars-law.com/wp-content/uploads/2015/05/Enforcement-of-Foreign-Judg-GOO.pdf>; <https://conflictoflaws.net/2020/the-recognition-and-enforcement-of-foreign-judgments-at-common-law-in-nigeria>; <https://www.lexology.com/library/detail.aspx?g=f066a218-1f51-4c59-b8a4-396bf2f52877>;  
[https://www.academia.edu/33175328/Enforcement\\_of\\_Foreign\\_Judgments\\_in\\_Nigeria\\_A\\_Critical\\_Analysis](https://www.academia.edu/33175328/Enforcement_of_Foreign_Judgments_in_Nigeria_A_Critical_Analysis); <https://www.slideshare.net/NnagozieAzih/a-synopsis-of-the-registration-and-enforcement-of-foreign-judgments-in-nigeria-57180309>; <file:///C:/Users/Jacob%20Obi/Downloads/168803-Article%20Text-434177-1-10-20180327.pdf>;  
<https://www.uubo.org/media/1342/enforcement-of-foreign-judgements-under-nigerian-law.pdf>

<sup>3</sup>Article 28 of The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, 1971 required deposit of instruments of ratification by two states but it has still not come into effect. The 1971 Convention has probably now been replaced by The Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 2 July 2019, which, similarly requires deposit of instruments of ratification, acceptance or approval by two states. Although the 2019 Hague Judgments Convention was on 3 March 2021 signed by Israel as the third state after Uruguay and Ukraine, it has still not come into force the requirement of deposit of instruments of ratification by two states having not been met.

<sup>1</sup> | Statutory Nonreciprocal Enforcement of Foreign Judgments in Nigeria: Revisiting Macaulay v. RZB Austria

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Generally speaking, a judgment of a court of a foreign country may be enforced in Nigeria by either one of two ways, namely: enforcement by action under common law and statutory enforcement. Under common law, a judgment emanating from a foreign court may be enforced in Nigeria by a lawsuit founded on the foreign judgment sought to be enforced. In **Mudasiru v. Onyearu**<sup>4</sup>, the court aptly stated that: “[a] plaintiff is not deprived of his right to sue at common law upon an obligation created by a foreign judgment.”

By the practice and procedure of Nigerian courts, a plaintiff enforcing a foreign judgment by an action under common law may bypass the huddle of full-blown trial by concurrently applying for summary judgement ostensibly on the ground that the defendant has no valid defence to the suit. If successful, the Nigerian court would deliver its judgment, essentially reaffirming the facts already established in the foreign judgment and adopting and re-enacting the reliefs already granted in the foreign judgment. The foreign judgment, which by the order of the Nigerian court, becomes a judgment of the Nigerian court, is then enforced through the Nigerian state apparatus for enforcing judgments of Nigerian courts.

Statutory enforcement of foreign judgments on the other hand involves *ex-parte* registration of a foreign judgment by a Nigerian court by which the judgment immediately becomes enforceable as the judgment of the registering Nigerian court. There are two legislations which govern statutory enforcement of foreign judgments in Nigeria. The first is the Reciprocal Enforcement of Judgment Ordinance (the “**Ordinance**”), enacted in 1922 but now appearing in the body of Nigeria's laws as Chapter 175 of the Laws of the Federation of Nigeria and Lagos, 1958.

Being an enactment of the British colonial government, this legislation came into force as “*an Ordinance to facilitate 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*”. By various proclamations, the Ordinance was extended to judgments of various territories and dominions under Her Majesty's protection, including judgments of the: Supreme Court of the Gold Coast Colony (now Ghana), Colony and Protectorate of Sierra Leone, Courts of the Chief Commissioners of Ashanti and of the Northern Territories of the Gold Coast (also Ghana), Supreme Court of the Colony of the Gambia, Supreme Court of the State of Victoria, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Island, St Lucia, St Vincent and Trinidad and Tobago<sup>5</sup>. In order for the Ordinance to be applicable, it was expected that all such territories and dominions to which the Ordinance was made applicable would, by their own municipal legislations, extend reciprocal enforcement to judgments obtained in Nigeria.

The second statutory regime for the enforcement of foreign judgments in Nigeria is the Foreign Judgment (Reciprocal Enforcement) Act<sup>6</sup> (the “**Act**”). The Act is more general and does not apply to any particular territory but authorises Nigeria's Minister of Justice to make an order extending recognition and enforcement to judgments of superior courts of foreign countries which accord reciprocal recognition and enforcement to judgments of Nigerian superior courts. There has been no exercise of this ministerial powers as of yet.

The underlying principle for statutory enforcement of foreign judgments by registration in Nigeria is reciprocity and accords with the global trend as reflected in the 1971 and 2019 Hague Conventions, making

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<sup>4</sup>[2013] 7 NWLR (Pt. 1354) 419 at 445, paras. E - F

<sup>5</sup>See: <https://www.uubo.org/media/1342/enforcement-of-foreign-judgements-under-nigerian-law.pdf>

<sup>6</sup>Cap. F35, Laws of the Federation of Nigeria, 2004 names the full title of the Act as “An Act to make provision for the enforcement in Nigeria of judgments given in foreign countries which accord reciprocal treatment to judgments given in Nigeria, for facilitating the enforcement in foreign countries of judgments given in Nigeria, and for other purposes in connection with the matters aforesaid”

the recognition and enforcements of foreign judgments in civil and commercial matters a matter of reciprocal contractual obligation of Contracting States. This makes the subject of this discuss quite apropos.

## C. The Macauley v. RZB Austria Principle on Nonreciprocal Statutory Enforcement

In Macauley v. RZB Austria, the Supreme Court of Nigeria interpreted and applied Section 10(a) of the 1990 edition of the Act at 298-299, paras. H – A of the law report as follows:

**“By this provision, irrespective, regardless or in spite of any other provision in the 1990 Act, any judgment of a foreign country including United Kingdom to which Part I of that Act was not extended, can only be registered within 12 months from the date of the judgment or any longer period allowed by the court registering the judgment since the provisions of Part I of the said Act had not been extended to it. Section 4 of the 1990 Act which speaks of registering a judgment within 6 years after the date of judgment only applies to the countries where Part I of the said Act was extended, that is to say, when the Minister made an order under the 1990 Act; and in this case it was not.”** [Bold emphasis supplied]

RZB Austria obtained judgment against Macauley at the High Court, Queen's Bench Division Commercial Court in England on 19 December 1995. On 28 August 1997, RZB Austria applied to the High Court of Lagos State to register the judgment for enforcement and the application was granted on 8 September 1997. On 22 October 1997, Macauley filed a petition to set aside the registration on the principal ground that RZB Austria's application to register the judgment was made outside the 12-months period allowed under Section 3 of the Ordinance. The High Court of Lagos State refused the petition and Macauley appealed to the Court of Appeal which agreed with the High Court. He then appealed to the Supreme Court which handed down this decision, allowing the appeal because, between 19 December 1995 when the judgment was delivered in England and 28 August 1997, when RZB Austria filed the application for the registration of the judgment in Nigeria, the 12-month period prescribed under Section 3(1) of the Ordinance had lapsed.

In its analysis, the Supreme Court restated the foreign judgment enforcement prescription period of 6 years under Section 4(1) of the Act and 12-months under Section 3(1) of the Ordinance. In the process, the apex court brought into perspective the provision of Section 10(a) of the Act which it interpreted to allow for the registration and enforcement of judgments of foreign countries which do not extend reciprocity to judgments of Nigerian courts.

Section 10(a) of the Act provides that:

*“Notwithstanding any other provision of this Act: a judgment given before the commencement of an order under section 3 of this Act applying Part I of this Act to the foreign country where the judgment was given may be registered within twelve months from the date of the judgment or such longer period as may be allowed by a superior court in Nigeria.”*

Considering the underlying legislative intent for the executive arm of government to determine when reciprocal enforcement should become applicable to any foreign country, it would appear that the more accurate interpretation of Section 10(a) of the Act would be that it applies in a transitional period, starting on the date the

<sup>7</sup>Section 3 of the Act

Minister of Justice issues a reciprocity order under Section 3(1) of the Act to the date in which such order comes into force. In that case, the judgment of the foreign country to which the Minister of Justice has issued reciprocity order that is yet to be effective may be enforced in Nigeria within 12 months or any further period as may be extended by the judgment registering Nigerian court.

But the **Macauley v. RZB Austria** decision generalised Section 10 to a situation where, and countries to which, Nigeria's Minister of Justice has yet to accord reciprocal enforcement of judgment. In this regard, the Supreme Court, per Uwaifo, J.S.C. confirmed at page 303, paragraph G – H of the law report that:

“The matter does not even end there because section 10 of the Act then proceeded to make provision for the registration of: (a) **any judgment given before the Minister makes an order under section 3 [that is, nonreciprocal statutory enforcement];** and (b) any judgment given after such order may have been made [that is, reciprocal statutory enforcement].” [Words in square brackets and bold emphasis supplied]

Undoubtedly the decision of the Supreme Court has established a new statutory regime for the enforcement of judgments of courts of foreign countries in Nigeria which, quite significantly, is not necessarily founded in reciprocity. If there was any doubt as to the Supreme Court's construction of Section 10(a), the Court of Appeal dispelled such when it held in **Teleglobe America Inc. v. Twenty First Century Tech. Ltd**<sup>8</sup> that the decision of the circuit court of Fairfax County, Virginia, United States of America, a country to which Nigeria has not accorded reciprocal enforcement of judgments, was registrable and enforceable in Nigeria under Section 10(a) of the Act, in reliance on **Macauley v. RZB Austria**.

The global implication of the decision in **Macauley v. RZB Austria** therefore is that the judgment of any foreign country may be statutorily enforced in Nigeria for a period of 12 months<sup>9</sup> until the Minister of Justice has extended reciprocity to the foreign country by which the judgments of that foreign country becomes enforceable in Nigeria for up to 6 years. Thus, unlike reciprocal enforcement of judgments under the Act which contains a prescription period of 6 years, nonreciprocal enforcement under the Act (like reciprocal enforcement under the Ordinance) is for a prescription period of 12 months from the date of the judgment.

## D. Conclusion

While it may be true that **Macauley v. RZB Austria** appears to deviate from the intention of the law because the judiciary sidestepped the very fundamental principle of reciprocity in the enforcement of foreign judgments, it is also true that the law, including statutory provisions, is what the courts say it is. **Macauley v. RZB Austria** will remain the law until the Supreme Court has had the opportunity and decided to reverse itself.

It is also a parallel view that **Macauley v. RZB Austria** took a pragmatic step to solve the practical problem of the unwillingness of the executive arm of government to actively engage the international community towards achieving the objective of the Act. For its proponents, the decision paints Nigeria in good light as a transnational litigation friendly country, considering the role enforceability of foreign judgments plays in cross-border transactions.

<sup>8</sup>[2008] 17 NWLR (Pt. 1115) 108

<sup>9</sup>The foreign judgment enforcing Nigerian court may extend enforceability by any such period as it considers necessary