

## Supreme Court Creates Pitfalls on Enforcement of Foreign Judgments in Nigeria

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### *Introduction*

The recent deregulation of the Nigerian economy will no doubt open a doorway for increased foreign investments in Nigeria. It is axiomatic that [*potential and existing*] foreign investors care about commercial realism and legal certainty more than anything as such a key concern is that laws and regulations governing enforcement of foreign judgments in Nigeria should be certain, clear and free from speculations.

It is against this background that the recent decision of Nigeria's Supreme Court in *Macaulay v. R.Z.B. of Austria*<sup>1</sup> (hereafter referred to as "*Macaulay*") is very germane. The court decided that the Reciprocal Enforcement of Judgment Ordinance 1958 (hereafter referred to as the "*1958 Ordinance*") is the applicable law for the enforcement of foreign judgments in Nigeria and not the Foreign Judgments (Reciprocal Enforcement) Act 1990 (hereafter referred to as the "*1990 Act*").

### *Implications of the decision*

The implications of this decision and its potential impact on the administration of justice, the development of Nigerian jurisprudence and the promotion of international business relations cannot be quantified. It suffices to mention the following here:

- A foreign judgment is now to be registered within 12 months as against the 6 years guaranteed under *the 1990 Act*. Looking at the spectrum, it is clear that many foreign judgments would be out of time and can only be registered if the court extends time.<sup>2</sup> This is not granted as of right as it involves the exercise of the courts discretion which can swing either way;
- until the Minister of Justice makes an Order under Section 3(1) of the 1990 Act, all judgments obtained from Commonwealth countries except England, Ireland, Scotland and other countries which the 1958 Ordinance extended<sup>3</sup> by proclamation, cannot enforce their judgments in Nigeria by registration.
- registration of foreign judgment *ex - parte*<sup>4</sup> is in serious conflict with the constitutional guarantee of fair hearing;
- having regard to the fact that the applicable law will determine the legal requirements as well as the procedure for registration, enforcement and setting aside of a foreign judgment registered in Nigeria, these procedural matters will be regulated by rules<sup>5</sup> and the Ordinance made in 1922 which are out of tune with current realities.

Another important implication is the likelihood of the Supreme Court departing from *Macaulay*. Although it will do so with the greatest hesitation, the Supreme Court nevertheless has power to depart from or overrule its previous decision where it is shown that the decision is inconsistent with the constitution, or is erroneous in law, or was given *per incuriam*, or it may occasion miscarriage of justice or perpetuate injustice.<sup>6</sup>

The prospect of a reversal is not far fetched when the diverse and discordant views from the lower courts as exemplified in decisions like *Dale Power Systems Plc v. Witt & Bush Limited*<sup>7</sup> *Halaoui v. Grosvenor Casinos Limited* and the court of Appeal decision in *Macaulay v. R.Z.B. of Austria*<sup>8</sup> are considered.<sup>9</sup>

The crucial question then is will the decision stand the test of time? The next few minutes will give an inkling of what to expect in the near future.

### **Position Before *Macaulay***

*Macaulay* was a case of first impression at the Supreme Court and to fully appreciate its implications it is necessary to look at the prior position of the law.

Nigerian law was influenced by the UK Administration of Justice Act (AJA) 1920 and the Foreign Judgment (Reciprocal Enforcement) Act 1933<sup>10</sup> (hereafter referred to as the "1933 Act"). The scheme in the UK was to have a separate law [AJA 1920] for registration and enforcement of judgments originating from her former colonies and protectorates on the one hand and another law [1933 Act] for other countries that the Act applied to.

Further, judgments obtained outside the United Kingdom were enforced in any of three ways<sup>11</sup>:

- by registration under Part II of AJA 1920;<sup>12</sup>
- by registration under Part I of the 1933 Act;<sup>13</sup> and
- by action under the common law.<sup>14</sup>

in respect of which a mandate was exercised [*by any part of His Majesty's Dominions*]<sup>16</sup> and be *extended* to His Majesty's dominions.<sup>15</sup> It is instructive that in the latter case, the Act could not be extended unless reciprocal provisions have been made by the legislature of the Dominion.

Nigeria followed this arrangement but rather than have two sets of laws she had one i.e. the Reciprocal Enforcement of Judgment Ordinance 1958 enacted in 1922<sup>17</sup> to accord reciprocity to AJA 1920.<sup>18</sup>

Also following the scheme of the AJA 1920 Part I of the Ordinance shall *apply* to England, Ireland, and Scotland [*as contemplated by Section 3(1)*] thus enabling judgments obtained from these countries to be registered as of right (or automatically). On the other hand, the Governor General may extend by proclamation Part I of the Ordinance to any part of Her Majesty's Dominions [*contemplated by Section 5(1)*]. Judgments obtained from such countries could not be registered unless the Governor General extends the Ordinance to those countries.

Following the scheme of AJA, the 1958 Ordinance *applied* automatically to England, Ireland, and Scotland<sup>19</sup> and judgments obtained from superior courts in these countries were registered without more. However as regards Her Majesty's Dominions,<sup>20</sup> the Ordinance did not apply automatically.<sup>21</sup> As a result, the Governor General needed to make a proclamation extending the Ordinance to the particular territory. Only after such extension can the judgments obtained from those territories be registered in Nigeria.

Against this background the Governor - General made proclamations pursuant to Section 5(1) extending the 1958 Ordinance to certain countries including Sierra Leone, Gambia, Ghana, Jamaica, Trinidad & Tobago, etc.<sup>22</sup>

This position was affirmed in *Macaulay* when the Court stated<sup>23</sup> that:

*"There is no doubt therefore that it (Ordinance) 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."*

It should be added that no provision was made in the 1958 Ordinance for countries outside England, Ireland, Scotland and those territories the Ordinance was extended by proclamation. It is submitted that foreign judgments obtained from these countries were to be enforced by action under the common law.<sup>24</sup>

This was the position until the *1990 Act* came into force on the 1<sup>st</sup> of February 1961. *Macaulay* will now be considered against this backdrop.

### **The Facts In Precis**

The Respondent obtained judgment against the Appellant at the High Court Queens Bench Division Commercial Court in England on 19<sup>th</sup> December 1995. By order obtained *ex- parte* the Respondent registered the judgment as a foreign judgment in the High Court of Lagos Nigeria pursuant to the 1990 Act on 18<sup>th</sup> August 1997 [20 months after the judgment was obtained].<sup>25</sup>

The Appellant applied to set aside the registration on two main grounds one of which was that it was not registered in accordance with the relevant and applicable law (*i.e.* the 1958 Ordinance). The High Court dismissed the application prompting an appeal to the Court of Appeal which dismissed the appeal. On further appeal the Supreme Court allowed the appeal up turning the decisions of both the High Court and Court of Appeal.

### **The Holding**

The kernel of the decision, as evinced from the lead judgment is that "*the provisions of Section 3 of the 1958 Ordinance and Section 10(a) of the 1990 Act apply to the question of registration of judgment in the instant case. Each of these sections provides that the judgment to be registered under it must be registered within twelve months from the date of the judgment...*"<sup>26</sup>

### **The Findings**

To arrive at the above decision the Supreme Court made certain profound findings which, in the respectful view of this writer has raised several legitimate questions to be discussed shortly. In the interim the findings made by the court are set out as follows, *to wit*:

1. the 1990 Act *did not specifically* repeal the 1958 Ordinance. The 1958 Ordinance 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;<sup>27</sup>
2. what Section 9(1) of the 1990 Act is saying is that where the 1958 Ordinance had been extended to any country before the commencement of the Act the Ordinance ceases to have effect. If the intention of the law makers was to be otherwise, Section 3 of the Act would have been superfluous or unnecessary;<sup>28</sup>
3. the 1958 Ordinance applies to all judgments obtained in [*the superior court of*] the United Kingdom and its application can be extended [*by proclamation under Section 5 thereof*] to any other territory administered under the United Kingdom or any other foreign country;<sup>29</sup>
4. since the Minister of Justice has not yet exercised his power under Section 3(1) of the 1990 Act extending the application of the Act to the United Kingdom, then Section 10(a) of the Act can also apply and the judgment may be registered within 12 months or such extended time as the court may allow;<sup>30</sup>
5. as a result of this lapse, the 1958 Ordinance continues to have effect until such time that the Minister extends the Act to any foreign country.

### ***Questions Arising***

The above findings of the apex court raise the following fundamental issues, *to wit*:

1. did the 1990 Act specifically repeal the 1958 Ordinance?
2. was the 1958 Ordinance extended to the United Kingdom and to parts of Her Majesty's dominions by proclamation or otherwise under Section 5 of the Ordinance?
3. on a proper construction of Section 3(1) of the 1990 Act, is the coming into force of the Act or its application to any foreign country conditional upon the Minister of Justice making an order extending the Act to any foreign country?
4. put differently does the 1958 Ordinance continue to have effect until such time that the Minister extends the Act to any foreign country?
5. what is the purport of Section 10(a) of the Act?

### ***Resolving Questions 1 and 2***

To answer the above questions, reference will be made to the provisions of Section 9 of the 1990 Act. For purpose of clarity, the relevant provisions will be reproduced hereunder.

(9) (1) "This Part of this Act *shall apply* to any part of the *Common Wealth other than Nigeria* and to judgments obtained in the court 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.*

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

### ***Construing Subsection (1) of Section 9***

Having regard to the word "*and*"<sup>31</sup> before the statement starting with the words "*the Reciprocal Enforcement of Judgments Ordinance shall ...*" it is clear that sub section has two limbs which provides, *inter alia*, that:

- Part I of the Act *shall apply* to any part of the *Common Wealth* other than Nigeria ...; and
- *the Reciprocal Enforcement of Judgments Ordinance (1958 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 the Act.*

### ***Construing Limb 1 of Sub section (1)***

The well established rule of construction of statute is that where the ordinary plain meaning of the words used in a statute are very clear and unambiguous, effect must be given to those words without resorting to any extrinsic or external aid. The duty of the court under those circumstances is to interpret the words strictly giving them their intended meaning and effect. See *Awolowo v. Shagari*,<sup>32</sup> *Texaco Panama Inc. v. Shell Petroleum Development Co. of Nigeria Ltd*,<sup>33</sup>

It is pertinent to observe with respect that the Supreme Court did not construe or better still properly construe the first limb of subsection (1). Indeed after reproducing the provisions of Section 9(1) the court did no more than to state that:

*"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."*<sup>34</sup>

There would have been no problem with the above statement being that it represents the plain and ordinary interpretation of the provision. However, in the very next sentence it seems the court did a *volt face* when it stated that:

*"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 was to be otherwise, Section 3 would have been superfluous and unnecessary."*<sup>35</sup>

This latter statement appears clearly incongruous with the earlier statement having regard to the literal and ordinary interpretation of the subsection.

To get the proper interpretation of the subsection, the first question is what is the plain and ordinary interpretation of the provision that *"this Part of the Act shall apply to the Commonwealth other than Nigeria and to judgments obtained in the court thereof as it applies to foreign countries and to judgments obtained in the courts of foreign countries."*

It would appear that the interpretation of the provision should start with deterring the purport of the words *"as it applies."* It is submitted that the use of the *simile*<sup>36</sup> *"as"*, indicates that Part 1 of the Act shall *"apply"* to Commonwealth countries in the way and manner it *"applies"* to other foreign countries. It is conceded that how the Act applies to other foreign countries is not very clear from reading the entire provisions of the Act or from the judgment of the Supreme Court. This obviously is a *lacuna*.

In situations like this, it will not be out of place to apply a purposive rather than a literal approach to interpretation of the part of the provision that is clear to meet the demands of the occasion.<sup>37</sup> Applying a purposeful interpretation what is clear is that Part 1 of the Act shall apply to the Commonwealth.

#### ***Construing Limb 2 of Sub section (1)***

Regarding the second limb of subsection (1) of Section 9, that *the Reciprocal Enforcement of Judgments Ordinance (1958 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 the Act*, the interpretation accorded by the court is that *"where the 1958 Ordinance had been extended to any country before the commencement of the said Act, the Ordinance ceases to have effect."*

It is submitted with respect that the provision does not bear out such interpretation and it is contrary to the spirit and intendment of Section 9(2) of the Act which contemplates that an order is to be made extending Part 1 of the Act before the Ordinance will cease to apply to such countries. Further the interpretation tends to overlook the fact that the 1990 Act specifically repealed the 1958 Ordinance by expressly stating that the Ordinance *shall cease to have effect*. In the light of this, it is difficult to contend that the Act did not specifically repeal the Ordinance.

Black's Law Dictionary<sup>38</sup> defines the word *"cease"* as *"to stop; to become extinct; to bring to an end."* It is submitted that *"cease"* has the same connotation and effect as *"repeal"*<sup>39</sup> the latter word (which is more commonly used in statutes) being a better legal rendition of *cease*. This writer is not unmindful of the word *"except"* used in the subsection (1) which means to *"leave something out of account or consideration."*<sup>40</sup> It is submitted that the a purposeful

construction of the word "*except*" is that the 1958 Ordinance was repealed in part *i.e.* in relation to Commonwealth countries. The implication is that the Ordinance shall not have effect in relation to judgments obtained in any part of the Commonwealth but shall continue to have effect in *those parts of Her Majesty's Dominions other than Nigeria to which the Ordinance extended at the date of the commencement of the Act.* That is countries like Sierra Leone, Gambia, Ghana, Jamaica, Trinidad & Tobago, etc, but not the UK from where the judgment sought to be enforced in *Macaulay* emanated from.<sup>41</sup>

By reason of the foregoing, it is difficult agreeing with the findings of the Supreme Court that the 1990 Act *did not specifically* repeal the 1958 Ordinance and that the 1958 Ordinance applies to the United Kingdom. The court is however correct in its finding that the 1958 Ordinance still applies to parts of Her Majesty's dominions to *which it was extended* by proclamation under Section 5 of the Ordinance.

### ***Resolving Questions 3 to 5***

Section 3(1) is relevant to the resolution of the issues. Section 3(1) provides as follows -

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

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

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

### **When Minister's Order Required**

Section 3 deals with the power of the Minister of Justice to *extend* Part 1 of the Act to foreign countries giving reciprocal treatment to Nigeria [*with respect to the enforcement in that country of judgments given in superior courts in Nigeria*].

It is the respectful view of this writer that Section 3(1) ought to be read together with other provisions of the Act (particularly Section 9(1)(2) reproduced above). When this is done, it becomes clear that the Minister's order is required only in respect of any part of Her Majesty's dominions to which the Ordinance *extended* under Section 9(1) of the Act.

A careful reading of Section 9(2) will show that Section 3(1) of the Act is intended to empower the Minister to extend Part 1 of the Act to countries to whom the Act did not apply by the effect of Section 9(1). Section 9(2) makes it possible for the Minister to make an order extending the Act to these countries and where such an order is made, Section 9(2) contemplates that the Ordinance shall cease to have effect in relation to those countries except as regards judgments obtained and registered before the coming into operation of the order. The Act shall in such situation become applicable.

It is submitted that there is nothing either in Section 9 or any other provision of the Act that suggest that application of the Act to countries in the Common Wealth shall be conditional upon the Minister's order or any other qualification.

### **Comparing Corresponding Provisions of the Act and the Ordinance**

To fully appreciate the point made above, it is pertinent to compare the scheme of Sections 3 (1), 4(1) and 9(1) of the 1990 Act with the corresponding provisions of Sections 3(1) and 5(1) of the 1958 Ordinance [*bearing in mind that the Act has the same scheme as the Ordinance*].<sup>42</sup>

By Section 3(1) of the 1958 Ordinance a High Court in Nigeria may on the application of the judgment creditor made within 12 months or such extended time, order that a judgment

obtained in a High Court in England or Ireland or Court of Session in Canada be enforced in Nigeria, if in all the circumstances of the case it is just and convenient that the judgment be enforced in Nigeria.

It should be observed that the requirement for the Governor-General's proclamation or the Minister's order was not a condition for registration of such judgments under Section 3(1) of the Ordinance. Section 3(1)(2) of the 1958 Ordinance corresponds substantially with the provision of Section 4(1) of the 1990 Act. Save that while Section 3(1) of the Ordinance expressly refers to judgments obtained from England, Ireland and Scotland, Section 4(1) refers to a judgment to which Part 1 of the Act applies. It is submitted that this provision refers to judgments obtained from Commonwealth countries as stipulated in Section 9(1) of the Act.

Further, the Governor-General was empowered under Section 5(1) of the Ordinance to *extend* the Ordinance to the judgments obtained in any part of Her Majesty's Dominions outside the UK. The condition for extension was that reciprocal provisions have been made by that country for the enforcement of judgments obtained in a High Court in Nigeria. This provision is *in pari materia* with Section 3(1) of the 1990 Act.

It is clear from the above that two categories of countries were contemplated under the Ordinance, as is the case under the Act. The first were countries specifically mentioned in Section 3(1) to which the Ordinance applied automatically on its coming into force as is the case with Sections 4(1) and 9(1) of the Act. The second categories were those countries referred to in Section 5(1) to which the Ordinance did not apply automatically but by *order of extension* as was done in relation to the countries referred to in Section 9(2) of the Act.

It is submitted in the light of the foregoing that the regime and scheme of the 1958 Ordinance was repeated in the 1990

#### ***The Transitional Provisions in Sections 9(1)(2) & 10 of the Act***

It is necessary to consider what may be termed the transitional provisions in Sections 9(1)(2) & 10 of the Act in the light of the finding of the Supreme Court to the effect that since the Minister of Justice has not yet exercised his power under Section 3(1) of the 1990 Act extending the application of the Act to the United Kingdom, then Section 10(a) of the Act can also apply and the judgment may be registered within 12 months or such extended time as the court may allow.<sup>43</sup>

The impression given from the above finding is that Section 10(a) fixes the time within which a judgment from the UK may be registered pending the Minister's order. With respect Section 10(a) does not support such interpretation. The Section provides that:

"Notwithstanding any other provision of this Act –

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

It is submitted that since the provision deals with the time within which a foreign judgment may be registered, the statement "*Notwithstanding any other provision of this Act*" should be taken to refer to Section 4(1) of the Act which stipulates a period of six years for registration of judgments to which Part I of the Act applies.

Further it would appear the Supreme Court construed the statement "*judgment given before the commencement of an order*" as if it were *judgment given before the making of an order*. It is submitted that "*before the commencement of an order*" suggests that an order has been made but is yet to commence or take effect. It is further submitted that the transitional arrangements in Sections 9(1)(2) & 10 of the Act were made to cover situations like this.

Before dwelling on the transitional provisions it is imperative to comment on the finding of the Supreme Court that by the provisions of Section 10(a) of the Act:

*"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 the Act was not extended, can only be registered within twelve months from the date of the judgment or any longer period allowed..<sup>44</sup>"*

The respectful view of this writer is that Section 10(a) was made to cover countries that an order need to be made under Section 3(1) extending Part I of the Act to them. It does not cover countries like the UK or other Commonwealth countries that the Act applies automatically. It is submitted that judgments obtained from the UK are to be registered within six years as provided by Section 4(1) of the Act and Section 10(a) has not changed this position.

However with regard to countries that the Act was extended by order but which order is yet to take effect, the judgment may be registered within twelve months in line with Section 10(a). It is against this background that the transitional provisions made under Section 9(1)(2) and Section 10 of the Act with respect countries to which the 1958 Ordinance extended as of the date of commencement of the Act will be considered. The transitional provisions are as follows;

- the 1958 Ordinance shall continue to apply to those countries until the Minister makes an order under Section 3(1) extending the Act to those countries (Section 9(2));
- an order extending the Act to any country to which the Ordinance extended does not affect any judgment obtained and registered before the coming into force of the order (Section 9(2));
- a judgment given before the commencement of an order extending Part 1 of the Act to a foreign country may be registered within 12 months or such extended time (Section 10 (a));
- judgments registered under the Ordinance at the time of the coming into operation of the order extending Part 1 of the Act to a foreign country shall be treated if it was registered under the Act (Section 10(b)).

### **Conclusions**

Contrary to the holding of the Supreme Court, it would appear from the foregoing discuss that:

- the 1990 Act is in force and it is the law to which recourse is to be had for the enforcement of all judgments obtained from the Commonwealth including England;
- it is unnecessary for the Minister of Justice to make an Order before the 1990 Act will apply to the Commonwealth including England;
- the 1958 Ordinance has been abolished in express terms from applying to England, Scotland and Ireland. The 1990 Act now apply to these countries;
- the 1958 Ordinance still apply to those parts of Her Majesty's dominions that the Ordinance extended as of the date of commencement of the 1990 Act;



- the 1990 Act may nevertheless be *extended* to and made applicable to those countries forming part of Her Majesty's dominions if the Minister makes an Order to that effect pursuant to Section 3(1) of the Act. No order has been made however;
- the time within which to apply for registration of judgment obtained from England is 6 years and 12 months for judgments emanating from those parts of Her Majesty's dominions that the 1958 Ordinance extended as of the date of commencement of the 1990 Act; and
- if an order is made extending the Act to those countries that the 1958 Ordinance extended, pending the commencement of the order any judgment obtained there may be registered within twelve months in line with Section 10(a).

### ***The Aftermath***

Without prejudice to the above conclusions, the judgment in Macaulay's case represents the law for the enforcement of foreign judgments in Nigeria. The Supreme Court is bound by it unless it is reversed and the lower courts stand the risk of being chastised for gross insubordination, judicial rascality and judicial impertinence<sup>45</sup> if it dares to depart from it. Nevertheless it should not be surprising if the brilliant jurists in the lower courts and even the apex court circumvent the harsh consequences of the decision by distinguishing it. It should also not be shocking to have conflicting decisions inadvertently emanating from the Supreme Court in the near future.<sup>46</sup> Having regard to the fact that jurisprudence on this subject is sparse, interpretation of these old and time worn statutes (the 1958 Ordinance and the 1990 Act) are not free from inherent difficulties and like a bull in a china shop must be handled with utmost care and skill.

### **Footnotes**

1. (2003) 18 NWLR (Pt. 852) 282; (2003) 12 SC (Pt. II) 22.
2. The court may extend time under Section 3(1) of the 1958 Ordinance
3. These countries are the Gold Coast (Ghana), Sierra Leone, Gambia, Newfoundland, New South Wales, the State of Victoria, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Islands, St. Lucia, St. Vincent, Trinidad and Tobago.
4. See Rules 1(1) and 5 of the Reciprocal Enforcement of Judgments Rules Cap 175 Laws of the Federation of Nigeria and Lagos 1958.
5. The Reciprocal Enforcement of Judgments Rules Cap 175 Laws of the Federation of Nigeria and Lagos 1958.
6. See *Odi v. Osafile* (1985) 1 NWLR (Pt. 1) 17 at 34-35, 37-39, 46-48; *Cardoso v. Daniel* (1986) 2 NWLR (Pt. 20) 1; *Ifediorah v. Ume* (1988) 2 NWLR (Pt. 74) 5; *Rossek v. ACB Ltd.* (1993) 8 NWLR (Pt. 312) 382 at page 447.
7. (2001) 8 NWLR (Pt. 716) 699
8. (1999) 4 NWLR (Pt. 600) 599 (CA).
9. See Godwin Omoaka, *Nigeria: Legal Regime For The Enforcement of Foreign Judgments in Nigeria: An Overview*, published in Mondaq December 2004.
10. 1933 Act was enacted to facilitate the extension (by Order in Council) of reciprocal registration and enforcement rights to any other foreign country not covered by the Administration of Justice Act 1920 which was prepared to give reciprocity of treatment to judgments given in the superior courts in the United Kingdom. See Louis N. Mbanefo, SAN, *Nigerian Shipping Practice and Procedure* page 31.
11. The Whyte Book, 1999 Vol. 1 paragraph 71/1/1 at pages 1333-1334.
12. With respect to judgments obtained from any part of His Majesty's Dominions outside the UK.
13. With respect to judgments obtained from any foreign country to which the Act has been applied.
14. With respect to judgments obtained from any other foreign country not covered by AJA and the 1933 Act.
15. See Section 13. The Administration of Justice Act is at pages 2-5 of the Laws of the Federation of Nigeria and Lagos 1958 Vol. XI
16. See Section 14.
17. The Reciprocal Enforcement of Judgment Ordinance shall be described as the 1922 Ordinance or the 1958 Ordinance as the context permits.
18. See Order in Council No. 291 of 1922 at pages 6-7 of Vol. XI of the Laws of the Federation of Nigeria and Lagos 1958 extending the Administration of Justice Act to the protectorate of Nigeria.
19. As contemplated by Section 3(1) of the Ordinance.
20. Defined in Section 5(2) as *any territory under Her Majesty's protection or in respect of which a mandate is exercised by the Government of any part of Her Majesty's Dominions or any trust territory.*

21. As contemplated by Section 5(1) of the Ordinance.
22. See pages 2084 - 2084 of the Laws of the Federation of Nigeria and Lagos (Subsidiary Legislation) in Vol. IX.,
23. Per Kalgo JSC at page 26 *supra*.
24. See Prof. R.H. Graveson, Conflict of Laws, 7th Edition, page 619. Common law enables a successful litigant to commence an action over a foreign judgment, the type of which would have been barred by the doctrine of *res judicata* had it been a domestic judgment. Actionability is based on the theory that the judgment though creating an obligation enforceable in the forum cannot be enforced without the institution of a fresh legal proceeding. A foreign judgment is not in itself enforced by registration as it constitutes merely a cause of action on which a judgment may be given in the country where the judgment is sought to be enforced.
25. It is pertinent to note momentarily that under the 1958 Ordinance (Section 3), a foreign judgment should be registered with 12 months [*or such extended time the court may allow*] whereas the 1990 Act (Section 4(1)) allows a period of 6years for registration.
26. Per, Kalgo, JSC at pages 29 –30 *ibid*.
27. page 25 *ibid*.
28. page 26 *ibid*.
29. *ibid*.
30. pages 27 – 28 *ibid*.
31. See *Ezekwesili v. Onwuagbu* (1998) 3 NWLR (Pt. 541) 217 at page 237 where it was held that "and" is a conjunction connecting words or phrases.
32. (1979) 6-9 SC 51.
33. (2002) 5 NWLR (Pt. 759) 209 at page 227H.
34. page 26 *op. cit*.
35. *ibid*.
36. A simile is used when comparing two unlike things by the use of the word *like* or *as*. See Merriam – Webster's Collegiate Dictionary (10th Edition) at page 1091.
37. See *Buhari v. Yusuf* (2003) 6 SC (Pt. II) 156 at page 194.
38. 6th Edition page at page 222.
39. In *Asims (Nigeria) Ltd v. Lower Benue River Basin Development Authority* (2002) 8 NWLR (Pt. 769) 349 at page 363E-F the Court of Appeal held that a repeal of a statute is the abrogation or annulling of a previously existing law by the enactment of a subsequent statute which declares that the former law shall be revoke or abrogated.
40. See Black's Law Dictionary, 6th Edition page 559.
41. See pages 2084 - 2084 of the Laws of the Federation of Nigeria and Lagos (Subsidiary Legislation) in Vol. IX.
42. Contained at pages 3181-3184, Vol. 4 of the Laws of the Federation of Nigeria 1958.
43. pages 27 – 28 *ibid*.
44. at page 28 *supra*.
45. The words of the Supreme Court in *Dalhatu v. Turaki* (2003) 7 SC 1 at page 11.
46. See Dr. Konyin Ajayi in a paper titled "*Continental Law, Common Law, Certainty & Justice E.O. Ayoola*" delivered at the 1st Hon. Justice E.O.Ayoola Lecture held February 20 2004. Ajayi noted that apart from conflicts within the same division of the Court of Appeal, there are inconsistencies from one division to another. It is also not uncommon to find the same appellate judge not following himself. It was also noted that contradictions in decisions have crept into the Supreme Court. There are clear rules on how to resolve conflicts in a court but the rules do not seem to be followed. These "environmental factors" it was noted, have led to a great slide in the certainty index of our case law.