

Nigeria

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1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

The primary legal and regulatory frameworks in Nigeria that governs the enforcement of foreign judgments are the:

- the Reciprocal Enforcement of Foreign Judgments Ordinance, 1922, which is contained in Cap 175, Laws of the Federation of Nigeria and Lagos, 1958 (the Ordinance);
- the Foreign Judgments (Reciprocal Enforcement) Act Cap F35, Laws of the Federation of Nigeria, 2004 (the Act); and
- the Civil Procedure of the various high courts.

It is pertinent to note at this point that before the Nigerian Courts will enforce a foreign judgment, such a judgment must be registered in compliance with the applicable laws. The Act sets out certain criteria necessary before a foreign judgment can be registered, which includes:

- *Jurisdiction* – The foreign court that rendered the judgment must have had both subject matter and entity jurisdiction. If the court lacked jurisdiction or acted outside of its own jurisdiction in delivering the judgment, the judgment will not be enforceable.
- *Final and conclusive* – The foreign judgment must be final and conclusive in nature, leaving no room for further appeal or modification in the country of origin. It must be a judgment given by a superior court in that country and cannot be a judgment given in its appellate jurisdiction (see s 3(2) of the Act).
- *Reciprocating country* – As already mentioned, the judgment must originate from a country recognised as reciprocating by Nigeria. This ensures a balanced and fair approach to enforcement.
- *No fraud or public policy violation* – Nigerian courts will not enforce foreign judgments if they were obtained fraudulently or are contrary to Nigerian public policy.
- *Regularly obtained* – The foreign judgment must have been obtained in compliance with the procedural laws of the foreign jurisdiction. For instance, the judgment creditor must satisfy the court that the judgment debtor had been duly served with the court processes leading up to the judgment, and that the judgment debtor had voluntarily elected to appear and be submitted to the jurisdiction of the foreign court.
- *No conflicting judgments* – If there is already a conflicting judgment between the same parties on the same subject matter in Nigeria, the foreign judgment will not be enforced.
- *Monetary claims* – The foreign judgment must be one that involves monetary compensation. The Act provides that it must involve a ‘payable [...] sum of money, not being a sum payable in respect of taxes or other charges of a like nature in respect of a fine or other penalty;’ (s 3(2) of the Act). It is therefore important to point out that section

3(3) of the Act, prohibits the registration and enforcement of judgments of a non-monetary nature. This provision is applicable to both civil proceedings, which encompasses awards in arbitration proceedings. It is also applicable to judgments rendered in criminal cases involving the payment of monetary compensation or damages to an aggrieved party. This is stipulated in s 2 of the Act.

It is important to note that being a common law country, such a judgment may also be enforced at common law by instituting a fresh suit under the undefended list. This procedure allows the judgment creditor to apply for a summary judgment attaching the foreign judgment as an exhibit amongst other documents; as proof that the judgment debtor does not have a defence against the amount owed. If the application is successful, the foreign judgment can be enforced by the court's sheriff.

2. What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, (eg, notice provisions)?

It is pertinent to note the following:

1. The Foreign Judgments (Reciprocal Enforcement) Act mandates that a judgment debtor be given adequate notice of the proceedings of the original action in sufficient time to enable them to appear and defend the proceedings. Sections 6(1)(a)(iii) of the Act makes it a ground for the setting aside of a registered foreign judgment.
2. That upon filing the foreign enforcement registration application, a notice of the application is served on the judgment debtor, granting such person(s) the opportunity to contest the registration. If objections arise, a court hearing is scheduled to determine the validity of the objections and the foreign judgment's eligibility for registration. Following a satisfactory assessment, the court issues a registration order, endowing the foreign judgment with the status of a Nigerian court judgment. With this registered judgment, the party seeking enforcement can proceed with enforcement proceedings, adhering to local procedures while utilising legal avenues to enforce the judgment's provisions effectively.
3. That the procedure for enforcing foreign judgments in Nigeria combines rigorous adherence to statutory rules, the opportunity for parties to contest the process, and the eventual recognition of the foreign judgment within the Nigerian legal system.

3. What special considerations apply where the defendant/debtor in enforcement proceedings is a state, (eg, doctrine of sovereign immunity)?

The doctrine of sovereign immunity plays a pivotal role in the context of enforcing foreign judgments in Nigeria. Sovereign immunity is a fundamental principle of international law. It asserts that sovereign states are immune from jurisdiction and legal actions of foreign courts. This doctrine has significant implications when attempting to enforce foreign judgments against states in Nigeria.

Nigeria, like many other nations, adheres to the doctrine of state immunity, (see the Diplomatic Immunities and Privileges Act 1962). However, this immunity is not absolute. One of such significant exceptions is the commercial activities exception. This exception implies that a state

becomes subject to legal action in foreign courts if the dispute arises from its commercial activities. This implies that if a state engages in commercial ventures or transactions, it therefore consents to the waiver of its sovereign immunity with respect to those specific activities.

Unfortunately, the Nigerian courts have yet to take a unified stance on the scope of the restrictive immunity in Nigeria. In *Ehiosu Order v The High Commissioner for Malaysia & Anor* ((2005) 4 NWLR 760) the trial judge at the Lagos High Court ruled that restrictive immunity was unknown to Nigerian law by virtue of the Diplomatic Immunities and Privileges Act of 1962. This was regardless of whether or not the dispute in question borders on a commercial or contractual business matter. By this ruling, it would appear that the concept of restrictive immunity is of no consequence under Nigerian laws.

On the contrary, in the Nigerian case of *African Reinsurance Corporation v AIM Consult Limited*, ((2004) 11 NWLR 223) the Nigerian Court of Appeal found that sovereign immunity cannot be allowed to be a sufficient defence in matters of trade, commerce or ordinary business activities. The Court ruled that it would be inequitable to set the appellant free from being called to answer obligations it freely assumed under a contract.

Also, in an unreported case before the High Court of the Federal Capital Territory in Abuja, Nigeria, a distinct application of the restrictive immunity principle emerged. This scenario unfolded within the legal context of *SC Montel Nig Ltd v International Organisation for Migration (IOM) & Anor* (CV/1623/2019, FCT High Court, Abuja). In this particular case, the Court rendered a judgment that diverged from prior cases. Notably, the Court issued a garnishee order absolute, effectuating the attachment of funds owed by IOM in favour of the judgment creditor.

Failure of the judgment debtor to raise the defence does not amount to a waiver of the defence of sovereign immunity. The reason is that the Nigerian courts have the power to raise the immunity for a judgment debtor *suo motu*, and thereafter give the parties an opportunity to address the court on the issue raised. This is in tandem with the principle of fair hearing as practised by the Nigerian courts. See the case of *Adegoke v Adibi* (1992 5 NWLR Pt 242 410, at 420).

4. What exceptions may apply where the claim results from improper actions of the defendant state, (eg, wars of aggression)?

In Nigeria, sovereign immunity is addressed by the principle of Crown immunity, which is inherited from the English common law. While Nigeria has evolved its legal framework and jurisprudence, the concept of sovereign immunity still applies in certain circumstances. Sovereign immunity is generally concerned with the immunity of states from being sued in foreign courts.

Exceptions to sovereign immunity under Nigerian Law

STATUTORY WAIVERS

Nigerian law provides for instances where the government consents to being sued or waives its immunity. For example, the Public Officers Protection Act and the Public Complaints Commission Act waive immunity for certain government actions.

COMMERCIAL ACTIVITIES

Under Nigerian laws, states can be sued in cases involving their commercial activities. If the government is engaged in a business-like activity, it may be subject to lawsuits related to that specific activity (see, *A G Federation v Alhaji Alhassan Dantata*, (2003) 12 NWLR (Pt 833) 475). In this case, the Nigerian Supreme Court reaffirmed the principle of Crown immunity but recognised that the government can waive its immunity in cases where it is involved in commercial activities.

ACTIONS AGAINST GOVERNMENT OFFICIALS

Individuals can sue government officials for actions taken in their personal capacities, even if the officials are acting in their official capacities. This is particularly relevant when officials are alleged to have violated an individual's rights.

HUMAN RIGHTS VIOLATIONS

The Nigerian Constitution and international human rights treaties to which Nigeria is a party provide avenues for individuals to seek redress against the government for human rights violations (see the case of *Ken Saro-Wiwa v Nigeria* ((2005) AHRLR 212 (NgCA 2005)). This case involved human rights violations against the environmental activist Ken Saro-Wiwa and others. The Nigerian Court of Appeal held that the Nigerian government could be held liable for human rights violations, emphasising that such violations are exceptions to sovereign immunity.

Criteria for applicability of exceptions to sovereign immunity

The criteria are set out in the Foreign Judgment (Reciprocal Enforcement) Act as explained above, an example of such is the commercial activities exception.

Whether war of aggression/breach of international law are considered to be exceptions to sovereign immunity

War of aggression and breach of international law are complex topics in the context of sovereign immunity and exceptions.

A war of aggression refers to the use of armed forces by a state against the sovereignty, territorial integrity, or political independence of another state; when the use of such forces is not justified by self-defence or authorised by the UN Security Council.

This means that when a state engages in actions that clearly violates established norms of international law, it may not be able to invoke sovereign immunity as a defence in legal proceedings. In terms of applicability of sovereign immunity, acts of aggression that violate international humanitarian laws, and the human rights as enshrined in the Nigerian Constitution

could influence the application of exceptions to sovereign immunity, (see the case of *Attorney General, Ogun State v Aberuagba*, ((2002) 8 NWLR (Pt 719) 349). The Nigerian Supreme Court ruled that when a government's action is in contravention of a person's constitutional rights, the government cannot rely on sovereign immunity as a defence.

Unfortunately, the Nigerian legal regime on the enforcement of foreign judgments is silent on the applicability of sovereign immunity in the light of acts of wars of aggression or any breach of international law's provisions. However, international legal instruments, to which Nigeria has either ratified or is a contracting party; such as the Genocide Convention and the Rome Statute of the International Criminal Court, establish mechanisms for holding individuals and states accountable for grave violations of international law. While these instruments primarily address individual criminal responsibility, they also contribute to the idea that states engaging in such actions should not be immune from legal consequences.

Which Party bears the burden of proof in the applicability of the exceptions?

The rules of civil procedural evidence are built on the Latin maxim, *affirmanti non neganti incumbit probatio* – 'the burden of proof lies upon he who asserts and not upon he who denies'. It therefore goes without saying that the judgment creditor seeking to rely on the exceptions in an enforcement proceeding, has the burden of proving the applicability of the exception.

5. What due process standards and exceptions may apply in proceedings for enforcements of judgment against a state?

The only due process standard set by the Foreign Judgments (Reciprocal Enforcement) Act is the adequate notice standard set out by section 6(1)(a)(iii) of the Act. The foreign court is expected to ensure that the judgment debtor is given adequate notice to enable it to adequately enter a defence in the original suit.

The Nigerian courts have the discretion as to whether to give deference to the law of courts of the jurisdiction in which the judgment was issued. However, the Act provides that the foreign court judgment must emanate from a superior court in the foreign jurisdiction.

The judgment debtor is charged with the burden of proving that due process has been complied with at the foreign courts, which is in compliance with section 3 of the Act. The Nigerians courts however, have the power to review the foreign judgment for compliance with applicable law and public policy. It can either do this *suo motu* or upon application by the judgment debtor.

5a. What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?

The Act is silent on the mode or acceptable means of service to be issued on the judgment debtor, in the original proceedings. However, a careful read of the provisions shows that the Act places emphasis on the sufficiency of time for the judgment debtor to enter a defence in the original proceeding. Under Nigerian laws, service by electronic means falls under the category of

substituted service, which can only be executed with the leave of the court. It is therefore safe to conclude that there is no exhaustive list of acceptable means of service, provided that it serves the purpose of sufficient service of the enforcement proceeding.

5b. What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?

Where conventional forms of service are impossible due to factors such as absence of diplomatic relations, the judgment creditor may seek the leave of the court to serve the enforcement processes. Under the Abuja (FCT) High Court Civil Procedure Rules 2018, Order 7 Rule 11(2) substituted service may be by way of email or any other electronic means, or even by courier services or any other means convenient to the court.

In an instance where diplomatic relations are absent, the court has the discretion to permit any means of substituted service possible.

5c. What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?

There are no further standards in relation to whether the requirements have been met in the original proceedings state. The only criteria provided for is that the foreign judgment was not obtained by fraud.

5d. What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?

Section 8(3) of the Legal Aid Act, provides for the creation and provision of free legal services to indigent persons who cannot afford legal representations provided that such person's income does not exceed minimum wage. Additionally, where a defendant wilfully refuses legal representation, they have the option to represent themselves. Apart from these the legal regime in Nigeria does not provide for any exceptions for a defendant state that is unable to get legal representation or chooses not to be represented in an enforcement proceeding.

6. What assets may be subject of enforcement if the claim is against a state and what are the requirements, (eg, enforcement against assets of state-owned entities)?

A significant challenge often encountered by judgment creditors seeking to enforce judgments against government entities and agencies in Nigeria pertains to the requirement outlined in the Sheriffs and Civil Process Act 2004 (the SCPA). This requirement dictates that prior to pursuing enforcement through garnishee proceedings, the consent of either the Attorney General of the Federation or the Attorney General of a specific state, depending on the case, must be obtained.

Section 84 of the SCPA specifically states that in cases where the funds subject to attachment through garnishee proceedings are in the possession or control of a public officer in their official capacity or are considered *in custodia legis* (under legal custody), an *order nisi* (an interim order)

cannot be granted unless prior consent for such attachment is secured from the relevant authority. In this context, the term 'appropriate officer' refers to either the Attorney General of the Federation or the Attorney General of the relevant state, as applicable.

It crucial to note that, it is usually very difficult to receive this consent from the relevant Attorney General.