

## EXAMINATION OF THE RULES FOR THE ENFORCEMENT OF FOREIGN JUDGMENTS IN NIGERIA

### Abstract

The dynamism of human interaction occasionally brings about disputes or disagreements, which eventually result into settlement. The traditional society had means of settling this kind of disputes. However, in the modern societies, through the instrumentality of the law and other components of law enforcement, disputes are settled between parties. One of these components is the court. By the instrumentality of law, an aggrieved party goes to court to seek redress. It is trite that no State is an island. Therefore, in a bid to protect the business interests of citizens, the need to create a fair play environment for enforcement of judgment interstate arose. Nigeria is not party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments. Foreign judgments are enforced in Nigeria by virtue of Common Law principles and municipal legislations, like the Foreign Judgments (Reciprocal Enforcement) Act, Cap F35 LFN, 2010(the Act) and Reciprocal Enforcement of Judgments Ordinance, 1922, Cap 175, LFN and Lagos, 1958. This work therefore, examined the rules for the enforcement of foreign judgments in Nigeria. In the light of multiplicity of the laws in this area, it was identified that the primary challenge to the enforcement of foreign judgments in Nigeria is the conflict as to which law is most appropriately applicable in this area, amidst other numerous challenges like certain provisions of the Act that tend to breed injustice to the judgment creditor. The research used the doctrinal research approach and relied heavily on statutes and Common Law principles. Opinions of eminent authors expressed in text books and journals as well as reliable internet sources were also resorted to as secondary sources of this research work. Research finding revealed that, judicial authorities seem to be settled that the two local legislations above are applicable subject however to the powers of the Minister of Justice. It is also our finding that section 12 Foreign Judgments (Reciprocal Enforcement) Act, Cap F35 LFN, 2010 manifests a clear intention of Nigeria to render unenforceable, any judgment pronounced by a court of a foreign country which does not give due recognition to judgments delivered by Nigerian courts in Nigeria. However, in the light of recent development relating to reciprocity on the practice of the recognition and enforcement of foreign judgments for a better business environment and opportunities between citizens of States, this work recommended among other things that the law and rules regulating the enforcement of foreign judgments in Nigeria should be amended to reflect modern realities. Consequently, the work will be beneficial to the practicing lawyers and academics alike.

### 1.1 Introduction

As social beings, we interact with one another. The dynamic nature of this interaction occasionally brings about disputes or disagreements. The traditional society had means of settling this kind of disputes. However, in the modern times, civilized societies have put some instruments in place in order to meet up with the sophistication of the modern societies and make life more meaningful. One of such instruments is law strictly called. According to Suleiman *et al*, Law is defined as “the whole prescriptive and authoritative rules of human conduct regarded as binding and made or consented to by the State, the breach of which sanction is imposed.”<sup>1</sup> In the modern concept of law, there are institutionalized components

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that are responsible for effecting obligation and sanction upon infraction of the law. One of these components is the court. By the instrumentality of law, an aggrieved party normally goes to court of competent jurisdiction to seek redress. One of the duties of the court in this regard is to make order or declaration as *per* the rights of the parties involved. The matter does not however end with the court pronouncing its judgment. Enforcement<sup>2</sup> of the court's judgment is the next procedure. Apart from declaratory judgments that do not require physical and practical enforcement, other forms of judgment<sup>3</sup> may need some form of compliance or the other in order to be realized. Otherwise, the successful litigant, called the judgment creditor, may have secured a pyrrhic victory.

It is generally accepted that the powers of the courts are limited by their territorial boundaries or territorial jurisdiction. Thus, a judgment pronounced by the court of one jurisdiction may have no force or effect beyond its own territory except for situations where other jurisdictions have agreed to allow such judgment to be enforced within their own territories. The implication of this is that where countries do not allow the foreign judgment to be enforced in their jurisdictions, it is very difficult for parties to engage in international transaction.

The judicial process of enforcing a foreign judgment has become more complex and is an area of growing concern.<sup>4</sup>The courts are also required to respond to the modern-day needs of international commerce to expand the rules of private international law concerning the enforcement of foreign judgments. The courts play a very significant role in this regard. The attitude of the courts or the approach adopted by the courts will have a profound effect on international trade and commerce. Cross-border trade and commerce will be impeded or stultified if the courts were to adopt "protectionist policies" or use "nationalistic undertones" when dealing with the issues at hand. On the other hand, if the courts were to demonstrate a willingness to accept that modern-day cross-border legal problems require the adoption of novel or innovative approaches in addressing the issues of enforcement of foreign judgments, this will go a long way in promoting global business.

Enforcement of judgment is the last stage of the judicial process after the legal right, claim or interest has ended in a judgment or order which remains to be enforced. It is the process whereby a judgment or order of court is enforced or to which it is made effective according to law. Most judgment requires compliance with their terms. It is only in the case of a declaratory judgment which merely declares what the right of a party is without imposing any sanction on a defendant or directing either of the parties to do anything that execution is not called for or levied. Same applies to foreign judgments sought to be enforced in a different country other than the country of the original Court.

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<sup>1</sup>I. N. Suleiman et al *The Nigerian Law Dictionary*, 1st ed.(Kongo, Zaria: Tamaza Pub. Co., 1996), p. 193.

<sup>2</sup>Enforcement means the act of giving effect to the Court's judgment or orders. See *Olojede v Olaleye* (2010) 4 NWLR (Pt. 1183) 18 C. A.

<sup>3</sup> For example, Executory judgments. Executory judgment simply means the judgment that declares the respective rights and obligations of the parties and then proceeds to order the defendant to act or omit to act.

<sup>4</sup>Yeow-Choy Choong, "Enforcement of Foreign Judgments: The Role of the Courts in Promoting (or Impeding) Global Business", *International Journal of Humanities and Social Sciences* Volume 1 Number 2, <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.111.6990&rep=rep1&type=pdf>, accessed on the 4<sup>th</sup> October, 2018.

## 1.2 Clarification of Terms.

**1.2.1 The Meaning of Foreign Judgments:** According to Efevwerhan, a judgment is the reasoned and binding decision of the court.<sup>5</sup> It is the final decision of a court in a dispute between parties. The Foreign Judgments (Reciprocal Enforcement) Act, 1961,<sup>6</sup> did not specifically mention foreign judgment in the definition section. However, it defined judgment under the said section 2 as follows:

Judgment means a judgment or order given or made by a court in any civil proceedings and shall include an award in proceedings on an arbitration if the award has in pursuance of the law in force in the place where it was made become enforceable in the same manner as a judgment given by a court in that place, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party.

It may seem tenable to argue that since the powers of the courts to enforce their judgments have territorial restriction, and so, a judgment rendered in one jurisdiction is not ordinarily enforceable in another jurisdiction, it could be tentatively concluded that a judgment rendered in Lagos State, intended to be executed in Enugu State qualifies as foreign judgment in this sense, since, according to Efevwerhan, in the enforcement of inter-state judgments, a writ of execution issued in one State is only enforceable within the territory of the state in which it issued.<sup>7</sup> According to the erudite author, the judgment creditor will get a certificate of judgment for the rendering court and register same with the Registrar of a court of similar jurisdiction in that other state, from where the judgment will be enforced. This procedure may be similar with that for the enforcement of the judgment of the court of another country in Nigeria. However, there is a consensus of opinion pointing to the fact that a foreign judgment means a judgment rendered by a court of competent jurisdiction of one country intended to be enforced in another country.<sup>8</sup> B. A. Garner defined foreign judgment as “a judgment rendered by a court of a state or country different from that where the judgment or its effect is at issue.”<sup>9</sup> The author defined “State” to mean “the political system of people who are politically organized; the system of rules by which jurisdiction and authority are exercised over such a body of people.” In this sense therefore, a foreign Judgment would therefore mean the final decision of a court in such other country. Hence, even though the judgment of Lagos State court could be enforced in Enugu State by means of registration of the judgment, in the Registry of Enugu State Judiciary,<sup>10</sup> it is clear that in Nigeria, foreign judgment means a judgment of one country intended to be enforced in Nigeria. This is buttressed by the Long Title to the Foreign Judgments (Reciprocal Enforcement) Act, 1961 which says that the Act “...makes [sic] provision for the enforcement of judgments in Nigeria given in foreign countries, which accord reciprocal treatment to judgments given in Nigeria. It is for facilitating the enforcement in foreign countries of judgments given in Nigeria, and for other purposes in connection with the matters aforementioned. Therefore, in this paper, reference to foreign judgment will mean reference to judgment delivered in a country intended to be enforced in Nigeria.

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<sup>5</sup>D. I. Efevwerhan, *The Principles of Civil Procedure in Nigeria*, 2<sup>nd</sup> Edn. (Enugu: Snaap Press Ltd., 2013), p. 346.

<sup>6</sup> Cap F 35, LFN, 2010.

<sup>7</sup>*Ibid.* p. 393.

<sup>8</sup> See F. Nwadialo, *Civil Procedure in Nigeria*, 2<sup>nd</sup> Ed. (Lagos: University of Lagos Press, 2000), p. 1043; D. I. Efevwerhan, *Op. Cit.* P. 393.

<sup>9</sup> B. A. Garner, “*Black’s Law Dictionary*”, 8<sup>th</sup> Edn. (Eagan Minnesota: Thomas West Group, 2004), p. 859.

<sup>10</sup> See Sections 104-110 of the Sheriff and Civil Processes Act.

**1.2.2 Enforcement of Judgment and Recognition of Judgment:** There is a difference between enforcement of judgment and recognition of judgment. It is plain that while a court may recognize every judgment, it does not enforce every judgment which it recognizes. A judgment may be recognized as imposing an obligation/duty on a party against whom the judgment was given but may not be capable of enforcement. A Nigerian court may recognize a foreign judgment as a basis for a party resisting an action in a Nigerian court where the foreign judgment and the subsequent action in Nigeria are based on the same set of facts. In this circumstance, the Nigerian court may recognize the foreign judgment as a basis for a plea of *res judicata* in the Nigerian action even though the foreign judgment is not enforceable in Nigeria.

### **1.3 Theories of Enforcement of Foreign Judgment.**

In the ancient time, local law was applied to foreigners/aliens and foreign judgments were denied any force beyond their territories. By contrast, under the *jus commune*,<sup>11</sup> no clear difference was made between foreign and local judgments. Foreign judgments were freely recognized and enforced. This liberal attitude changed with the rise of sovereignty. A duty to enforce foreign judgments was then rejected as an undue restraint of sovereignty. Once the idea of sovereignty limited the authority of judgments to State's boundaries, the recognition of foreign judgments between sovereign States had to be based on new principles. In their 1968 seminal survey on the "recognition of foreign adjudications," Von Mehren and Trautman set out five reasons attesting to the importance of recognizing judgments rendered in foreign nations. The policies they highlighted focused on efficiency, protection of the successful party, forum shopping, grant of authority to the more appropriate jurisdiction and "an interest in fostering stability and unity in an international order in which many aspects of life are not confined to any single jurisdiction."<sup>12</sup> These have been narrowed down to two theories. Thus, in general terms, two theoretical justifications have now been advanced to justify the enforcement of foreign judgment.<sup>13</sup> These are the theories of Reciprocity and Obligation.

**1.3.1 The theory of Reciprocity:** This theory operates on mutual relationship. The theory posits that the courts of country A should recognize and enforce the judgment of country B, if *mutatis mutandis*, country B is prepared to offer similar recognition and enforcement to the judgments of country A.<sup>14</sup>

**1.3.2 The Theory of Obligation:** The doctrine of Obligation, on the other hand, came into prominence in the 19th century and was put forward by Blackburn J. in *Schibsby v Westenholz*<sup>15</sup> as follows:

We think that the true principles on which the judgments of foreign tribunals are enforced in England is that the judgment of a court of competent

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<sup>11</sup>*Jus Commune* or *Jus Commune* is Latin for "Common Law" in certain jurisdictions. It is often used by Civil Law Jurists to refer to those aspects of the unchanging legal principles of the Civil Law System, sometimes called "the law of the land" in English Law.

<sup>12</sup> A. T. Von Mehren and D. T. Trautman, "Recognition of Foreign Adjudications: A Survey and a Suggested Approach", *Harvard Law Review*, Vol. 81, (1968), pp. 1601-04.

<sup>13</sup> John O' Brien, *Smith Conflict of Laws*, 2<sup>nd</sup> ed. (U.K.: Cavendish Publishers Ltd., 1999), p. 263.

<sup>14</sup>Jonathan Hill et al, *Clarkson & Hill's Conflict of Law*, 5<sup>th</sup> edn. (London: Oxford University Press, 2016), p. 167.

<sup>15</sup>(1870) LR 6 QB 155 at p. 159. The doctrine was approved in *Adams v Cape Industries PLC* (1990) Ch. 433.

jurisdiction over the defendant imposes a duty or obligation on the defendant to pay the sum for which judgment is given, which the courts in this country are bound to enforce; and anything which negatives that duty, or forms a legal excuse for not performing it, is a defense to the action.

This theory is premised on the notion that if the original court assumed jurisdiction on a proper basis, the court's judgment should, *prima facie* be regarded as creating an obligation between the parties to the foreign proceedings which the foreign court ought to recognize and, where appropriate, enforce. The theory reinforces the principle of Comity. According to Paul, Comity is the most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. Comity thus serves as not only a theoretical but also a legal justification for the resolution of conflict of laws problems where a Court in one country may apply the laws of another country by virtue of comity. The U. S. Supreme Court described Comity as "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws."<sup>16</sup> It is therefore on this basis that the principle of Obligation in the enforcement of foreign judgments applies.

## **2.0 Enforcement of Foreign Judgment in Nigeria.**

### **2.1 Sources of Law for the Enforcement of Foreign Judgments.**

We have said that the powers of the courts are restricted by their territorial jurisdiction to the extent that a judgment pronounced by the court of one jurisdiction does not have effect beyond its own territory save for situations where other jurisdictions have agreed to allow such judgment enforceability within their own territories. This is complimentary to the evergreen public international law principle of sovereignty of States. Pertinently, Nigeria is a federation of 36 states with three tiers of government.<sup>17</sup> The legislative competence of each tier of government is constitutionally delimited. Clearly, enforcement of judgment falls within the exclusive legislative sphere of the Federal Government, and by implication, only the National Assembly can competently legislate on matters relating to enforcement of judgment.<sup>18</sup>

Again, Nigeria is not party to any bilateral or multilateral convention on the recognition and enforcement of judgments. The enforcement of foreign judgments in Nigeria is, therefore, governed by Common Law Principles, and other legislations made up of the Reciprocal Enforcement of Judgments Ordinance;<sup>19</sup> the Foreign Judgment (Reciprocal Enforcement) Act;<sup>20</sup> the Sheriffs and Civil Processes Act; and the various Civil Procedure Rules of the Courts before which registration and enforcement are sought. We shall consider enforcement of foreign judgment under the following headings.

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<sup>16</sup> *Hilton v Guyot*, 159 U.S. 113, 164 (1895). Joel R. Paul, "Comity in International Law", 32 Harvard International Law Journal Vol. 32, Issue 1, (1991), pp. 40-44.

<sup>17</sup> The Federal, State and Local Government.

<sup>18</sup> See item 57 in the Second Schedule (Exclusive Legislative List) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

<sup>19</sup> This Ordinance was originally enacted in 1922 but is now in Chapter 175 in the Laws of the Federation of Nigeria and Lagos, 1958, hereinafter called the Ordinance.

<sup>20</sup> Cap F 35, LFN, 2010, hereinafter called the Act.

## 2.2 Enforcement at Common Law

In the absence of any applicable statute, bilateral treaty or any special regime, the general legal framework under which a foreign judgment would be recognized and enforced in Nigeria and many other Common Wealth Countries is at Common Law. At Common Law, a foreign judgment constitutes a debt giving rise to a fresh cause of action in favor of the judgment creditor. This position is still applicable in Nigeria until there is any statutory abolition/modification.

There seems to be a common practice among Common Wealth Countries that a judgment creditor<sup>21</sup> cannot directly enforce the judgment in the judgment debtor's country. The Common Law deems the foreign judgment as creating an obligation, but the judgment creditor has to bring a fresh action on the judgment. The judgment creditor cannot go into direct execution. The common law treats such judgments as evidence of a debt.<sup>22</sup> A foreign judgment is enforced at Common Law by action begun by writ of summons in which the claim is for the payment of the sum due in the judgment. This was the opinion of the English Court in *Grant v Easton*.<sup>23</sup> A party seeking recognition and enforcement of a foreign judgment in Nigeria must bring an action on the judgment, ie, sue on the foreign judgment in a Nigerian court.

However, for a foreign judgment to be recognized and enforced in Nigeria under the Common Law regime, the judgment must satisfy the under-listed requirements:

a. The judgment must be a judgment of a superior court of the country of the original court with the requisite jurisdiction to entertain such matter. The court that delivers the judgment must be court of competent jurisdiction over the foreign defendant. In private international law parlance, this is technically referred to as jurisdiction *in personam*.<sup>24</sup> To decide whether the foreign court has the jurisdiction to entertain an action *in personam* at common law, some rules were developed in the frequently cited judgment of Buckley L. J. in *Emmanuel v Symon*.<sup>25</sup> The Law Lord stated that:

In an action in personam, there are five cases in which the courts of this country will enforce a foreign judgment: (1) where the defendant is a subject of the foreign country in which the judgment has been obtained; (2) where he was resident in the foreign country when the action began (3) where the defendant in the character of the plaintiff has selected the forum in which he was afterward sued (4) where he has voluntarily appeared; and (5) where he has contracted to submit himself to the forum in which the judgment was obtained.

In relation to rule one above, Collins *et al* submitted that a defendant can be subject of the foreign country most likely in two ways only. First, if he is a citizen of that country, or

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<sup>21</sup>Section 2 of the Foreign Judgment (Reciprocal Enforcement) Act defined "Judgment creditor" as the person in whose favour the judgment was given, and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise

<sup>22</sup>Richard Frimpong Oppong, "Recognition and Enforcement of Foreign Judgments in Ghana: A Second Look at a Colonial Inheritance", *Commonwealth Law Bulletin*, Vol. 31, No. 4, <https://core.ac.uk/download/pdf/68887.pdf>, accessed on the 4<sup>th</sup> October, 2018.

<sup>23</sup> (1883), 13 Q. B. D. 302.

<sup>24</sup>*In personam*, is a Latin word means "against a person" rather than a thing or a property. See Garner, *Black's Law Dictionary*, 8<sup>th</sup> ed. (Eagan Minnesota: Thomson West Group, 2004), p. 807.

<sup>25</sup>(1908) 1 K. B. 302; *Barsoum v Clemessy International* (1999) 12 NWLR (Pt. 632) 516.

second he temporarily finds himself in the foreign country and bound to obey its law.<sup>26</sup> In any of these cases, the foreign court will assume jurisdiction in this regard. In relation to rule two, resident as used here has been interpreted narrowly, beyond the ordinary meaning of “a person who lives in a particular place or has his home there”, to mean mere “presence” in the foreign country with or without intention to stay there no matter how short.<sup>27</sup> For a defendant to be amenable to the jurisdiction of the foreign court in this context, he must be served with court’s writ.<sup>28</sup> However, the case is different under the 1961 Act. Section 6(2) (a) (i) requires voluntary submission of the defendant to the jurisdiction of the foreign court before its judgment against him becomes valid otherwise than for the purposes of protesting jurisdiction. In relation to rule three, the defendant will act in the character of the plaintiff when he sues as a claimant or he counter-claims after being sued by the plaintiff. In either case it is clear case of submission to the jurisdiction of the court. Thus, he cannot be heard complaining lack of jurisdiction after judgment against him is obtained.<sup>29</sup> In rule four, the defendant acknowledging service but did not participate in the proceeding or when he instructs his solicitor to accept service on his behalf, he is deemed to have submitted to the jurisdiction of the foreign court.

- b. The judgment must be a money judgment and for a certain sum. A sum is not fixed nor is the judgment final and conclusive in that regard if it is for a sum which is variable at some time in the future, or if it is for damages and costs which are subject to assessment, since the entire sum is not then ascertained or ascertainable.<sup>30</sup>
- c. The judgment must be final and conclusive between the parties thereto. A foreign judgment must be final and conclusive in the court that rendered it before it can be enforced. If it can be reopened by further proceedings in which defenses can be raised, which possibly could not have been pleaded in the earlier proceedings, a judgment in this respect is not final and conclusive and cannot be enforced under the Common Law.<sup>31</sup>
- d. The judgment must not have been obtained by fraud where such judgment is by illegitimate means the court will readily decline recognition and such judgment will not be enforced.
- e. If the judgment is for a *res*<sup>32</sup> other than money, the *res* must have been situate at the jurisdiction of the foreign court that gave the judgment sought as at the time of delivery.<sup>33</sup>

These conditions being satisfied, the judgment creditor may apply for summary judgment or come under the undefended list procedure. Either of these procedures is used where the claimant/plaintiff contends that the defendant has no defense to the claim and that there is no

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<sup>26</sup>L. Collins et al, *on the Conflict of Laws*, 12<sup>th</sup> Ed. (London: Sweet and Maxwell, 1993), p. 500.

<sup>27</sup>*Carrick v Hancock*, (1895) 12 T.L.R 59; and *Adams v Cape Industries Plc*, (1990) Ch. 433, p. 519.

<sup>28</sup>*Maherence of Baroda v. Wildenstein*, (1972)2 Q.B. 283 C. A. However, a prospective plaintiff whose prospective defendant quits jurisdiction to evade service of writ can still set the court in motion against the defendant through service outside jurisdiction.

<sup>29</sup> Section 6(2) (a) (ii) of the Act.

<sup>30</sup> J. G. Collier, *Conflict of Laws*, 2<sup>nd</sup> Ed. (New York: Cambridge University Press, 1994), p.127.

<sup>31</sup>*Nouvion v Freeman* (1889) 15 App. Case. 1 H. L.

<sup>32</sup> According to L. Collins and others, the general principle regulating the basis for jurisdiction *in rem* is that a court of a foreign Country has jurisdiction to give a judgment *in rem* capable of enforcement or recognition in England (Common Law) if the subject matter of the proceedings wherein that judgment was given is immovable or movable property which was at the time of the proceedings situate in that country. L. Collins and other, *Op. Cit.* p. 508.

<sup>33</sup>*Peenok Ltd v Hotel Presidential Ltd* (1982) 12 SC, I.

need for a full trial. The judgment creditor may also come by way of an ordinary writ of summons.

### 2.3 The Summary Judgment and undefended List Procedures<sup>34</sup>

The hallmark of the summary judgment and the undefended list procedures is an assertion by the claimant/plaintiff that the defendant has no defense to his claim. This is usually preferred where the subject matter is for an amount certain and uncontested. In the summary judgment procedure, in order to make this assertion the claimant/plaintiff must file with his originating processes an application for summary judgment, which shall be supported by an affidavit stating the grounds for his belief and a written address in support thereof. A certified true copy of the foreign judgment shall be exhibited to the affidavit in support of the application for summary judgment. The application for summary judgment is usually by motion on notice, and just like the conventional practice, the affidavit in support need not be personally sworn to by the foreign judgment creditor but may be sworn by any other person abreast with the facts of the case, provided he did same with the consent of the foreign judgment creditor, and that he set forth, explicitly, the facts and circumstances forming ground for his belief as well as reasonable particulars respecting his information and time, place and circumstance of his information, shall be given.<sup>35</sup>

Under the undefended list procedure, at the time of filing the writ of summons, the claimant/plaintiff will apply for the suit to be placed on the undefended list. The writ of summons so filed must be accompanied with an affidavit setting forth the grounds upon which the claim is based and stating that in the deponent's belief, there is no defense to the suit. A certified true copy of the foreign judgment must be exhibited to the affidavit. The writ of summons shall be marked undefended and shall be entered under the undefended list. A defendant served with originating processes accompanied with a motion for judgment pursuant to the summary judgment procedure may, if he wishes to defend the suit, file a statement of defense together with other defense processes, accompanied by a counter affidavit and a written address in reply to the application for summary judgment. Where it appears to the judge that the defendant has a good defense and ought to be permitted to defend the claim, he may be granted leave to so defend. But where the judge is satisfied that the defendant does not have a good defense to the claim, he may thereupon enter judgment for the claimant.

A defendant served with a writ of summons under the undefended list must, within five days of the day fixed for hearing of the suit, file a notice in writing indicating that he intends to defend the suit, together with a counter-affidavit disclosing a defense on the merit. Upon a consideration of these processes, the court may give him leave to defend upon such terms as the court may deem fit to impose. Where leave to defend is granted to the defendant, the suit shall be removed from the undefended list and placed on the ordinary cause list and the court may order pleadings or proceed to hearing without pleadings.

However, where a defendant, upon service of the processes neglects to deliver the notice of intention to defend and a counter-affidavit, or he is not granted leave by the court to defend, the suit shall be heard as an undefended suit and judgment given accordingly.

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<sup>34</sup>Order 21, High Court Civil Procedure Rules, FCT, Abuja; Order 23 Uniform Rules, applicable to Kano and other Jurisdictions; Order 11, High Court Civil Procedure Rules, Lagos State and Rivers State; Order 11 High Court Rule, Ebonyi State, 2008.

<sup>35</sup> See Section 115 of the Evidence Act, 2011.



### 2.3.1 Under the General/Ordinary Cause List

An action at Common Law for recognition and enforcement of a foreign judgment under the general cause list may be commenced by writ or by originating summons. The claimant/plaintiff will commence the action using the foreign judgment as his cause of action. Where the action is commenced by a writ of summons, the writ of summons shall be accompanied with the following processes: (a.) a statement of claim; (b.) a list of witnesses to be called at the trial; (c.) a written statement on oath of the witnesses to be called; (d.) copies of every document to be relied on at the trial, which document shall include a certified true copy of the foreign judgment. Other requirements will depend on the territorial jurisdiction of the court where the judgment is sought to be enforced. Where the action is commenced by originating summons, the originating summons shall be accompanied with the following processes: (a.) an affidavit setting out the facts relied upon; (b.) all the exhibits to be relied upon which shall include a certified true copy of the foreign judgment; (c.) a written address in support of the originating summons. Other requirements will depend on the territorial jurisdiction of the court where the judgment is sought to be enforced.

The claimant/plaintiff is required to serve the defendant with the above-mentioned processes. Once the defendant is served, he/she may enter appearance and file defense processes, after which the matter will proceed to trial. If judgment is delivered in favor of the claimant/plaintiff, the judgment creditor will proceed to enforce the judgment as a judgment of the Nigerian court, using one of the conventional methods of execution of judgments in Nigeria.<sup>36</sup>

### 2.4 Enforcement under Nigerian Statute

According to Collins *et al*, a foreign judgment cannot be immediately enforced by execution. This flows from the fact that the operation of legal systems is, in general, territorially circumscribed.<sup>37</sup> In Nigeria, opinions are varied as to what statutes apply. Commenting on this point, Nwadialo posits that the 1922 Ordinance has been repealed by implication, that foreign judgments are enforced in Nigeria under the Common Law and the Foreign Judgment (Reciprocal Enforcement) Act. His argument in support of this position is based on the fact that the said Ordinance was omitted in the 1958 Laws of the Federation and so, was intended to be repealed.<sup>38</sup> And that the 1961 Act succeeded the Ordinance and so, the two laws cannot operate side by side and this implies a repeal of the latter enactment.<sup>39</sup>

This confusion may have arisen as a result of various judgments of the high court which mostly applied the 1961 Act, the Common Law Rules of Private International Law or conflict of laws and, in extreme cases, the Evidence Act.<sup>40</sup> A few of these cases which later went on appeal are discussed below. In *Dale Power Systems Plc v Witt & Bush Ltd*,<sup>41</sup> the trial high court had applied the provisions of the 1961 Act in registering the foreign judgment. On appeal, one of the issues raised before the Court of Appeal was whether the 1958 Ordinance was the applicable legislation as regards the registration a foreign judgment obtained from the high court of Justice in England or the Act. The Court held that the trial Court was in error in

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<sup>36</sup>These are either by garnishee proceedings, writ of *feri facias* (fifa), writ of sequestration, writ of attachment, or by judgment summons.

<sup>37</sup> L. Collins et al, *on the Conflict of Laws*, 12<sup>th</sup> Ed. (London: Sweet and Maxwell, 1993), p. 453.

<sup>38</sup> F. Nwadialo, *Civil Procedure in Nigeria*, 2<sup>nd</sup> Ed. (Lagos: University of Lagos Press, 2000), p. 1046.

<sup>39</sup> He cited the case of *Attorney General of Kaduna State v Kaguma* (1982) 6 SC, 87. However, in the later cases decided by the Supreme Court, the apex Court seemed to have disagree with the opinion of the learned author as represented here.

<sup>40</sup> Cap 112, Laws of the Federation of Nigeria, 1990, now Evidence Act, 2011.

<sup>41</sup> (2001) 8 NWLR (Pt. 716) 699.

applying the 1961 Act and that the 1958 Ordinance was the applicable legislation. Also, the case of *Halaoui v Grosvernor Casinos Limited*,<sup>42</sup> an application was made to the high court to set aside the registration of a foreign judgment for non-compliance with the provisions of sections 6(2) of the 1990 Act. The High Court, relying on the provisions of the Evidence Act,<sup>43</sup> declined to set aside the registration of the judgment. On appeal, the Court of Appeal, in setting aside the judgment of the High Court held that the relevant statute was the 1961 Act, and the Evidence Act and the Common Law were inapplicable for the enforcement of foreign judgments in Nigeria.<sup>44</sup> In the above case, the Court of Appeal was silent on the issue of the applicability of the 1958 Ordinance. This would however seem to be due to the fact that it was not canvassed before that court by any of the parties.

It seems to us that much of the confusions on the applicable law regulating the enforcement of foreign judgments resulted from a misinterpretation of the provisions of section 9(1) of the 1961 Act which provides thus:

This Part of this Act shall apply to any part of the Commonwealth other than Nigeria and to the judgments obtained in the courts thereof as it applies to foreign countries and 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 Dominion other than Nigeria to which it extended at the date of the commencement of this Act.

From the above provision, it is clear that the Act primarily regulates the enforcement in Nigeria, of judgment made in other countries. In this regard, no such judgment can come from Nigeria for the purpose of being enforced under this Act in Nigeria. Hence, the Act is applicable for the enforcement of foreign judgment in Nigeria. Also, it would seem that the 1958 Ordinance applies only to the extent that the Minister of Justice has not made an order pursuant to section 3(1) of the 1961 Act extending the said Act to the United Kingdom and other foreign countries. Thus when the Minister makes such an enactment, the 1958 Ordinance will become inapplicable. The above view was considered by the Supreme Court in *Maculay v R. Z. B Austria*,<sup>45</sup> where the issue was the time within which to register an English judgment, the Court held that the applicable law was the Ordinance and that the judgment ought to have been registered within a period of twelve months. The Court, however, considered the effect of section 10(a) of the Act and held that "...since the Minister of Justice has not yet exercised his power under section 3 of the [Act] extending the application of Part 1 of the Act to the United Kingdom where the judgment in question was given, then section 10(a) of the said Act can also apply." The Court further held as follows:

By this provision, irrespective, regardless or in spite of any other provision in the 1990 Act [sic], 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.

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<sup>42</sup> (2002) 17 NWLR (Pt. 795) 28.

<sup>43</sup> Cap E 14, LFN 2004.

<sup>44</sup> A decision which, with due respect to the honorable court, might have been reached *per incurram*.

<sup>45</sup> (2009) N.W.L.R. (Pt. 1149) p. 298.

In earlier decided case of *Teleglobe America Inc. v 21st Century Tech. Ltd.*,<sup>46</sup> the Court of Appeal, relying on section 10(a) of the Act, held that a judgment of the Fairfax County, Virginia, United States of America, was registerable in Nigeria within a period of twelve months from the date the judgment was made, since the Ordinance does not apply to US judgments and the Minister has not made any order extending Part 1 of the Act to the United States of America.

From the foregoing analysis, it is settled that enforcement of foreign judgment in Nigeria is governed not only by the Common Law but by the 1958 Ordinance and the 1961 Act. These two statutes will be considered below.

#### 2.4.1 The Position under the Ordinance

The Ordinance was enacted during the colonial era and was not repealed upon the enactment of the Act in 1961. The current Act preserved the Ordinance<sup>47</sup> and provided that the Ordinance shall cease to apply to any part of Her Majesty's dominions once the Minister of Justice has, pursuant to the power conferred on him under the Act, made an order extending Part 1 of the Act to that part of Her Majesty's Dominions.<sup>48</sup> Nwadialo pointed out that the Ordinance applies to judgments of courts of United Kingdom, and empowered the president to extend, by order, its application to other Commonwealth countries.<sup>49</sup>

Under the Ordinance,<sup>50</sup> the following requirements must be satisfied: (a) the application for registration and enforcement of the judgment must be filed within 12 months after the date of the judgment or such longer periods as may be allowed by the courts; (b) the original courts must have acted within its jurisdiction; (c) the judgment debtor must have voluntarily appeared or otherwise submitted or agreed to submit to the jurisdiction of the foreign courts; (d) the judgment debtor must have been duly served with the court process leading up to the judgment; (e) the judgment was not obtained by fraud; (f) there is no appeal pending or the judgment debtor is not entitled to appeal and if entitled, has not shown any intention to appeal; and (g) the judgment is not in respect of a cause of action which, for reasons of public policy or for some other similar reasons, the courts would have refused to entertain.

The procedure for registration of a foreign judgment in Nigeria under the 1922 Ordinance is set out in Rules made pursuant to the Ordinance and is as follows:

- a. Application is made by a petition *ex parte* or on notice to a judge for leave to register the foreign judgment in Nigeria.

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<sup>46</sup>(2008)17 N.W.L.R ( Pt.1115).

<sup>47</sup>Section 10 (b) of the 1961 Act corroborate the fact that the Act preserved the Ordinance. The said section provides that ``any judgment registered under the Reciprocal Enforcement of Judgments Ordinance at the time of the coming into operation of an order made under section 3 of this Act in respect of the foreign country where judgment was given shall be treated as if registered under this Act and compliance with the rules applicable to the former Act shall satisfy the requirements of rules made under this Act.''

<sup>48</sup>Section 9(2) of the Act.

<sup>49</sup>F. Nwadialo, p. 1046. According to A. Akeredolu *et al*, by proclamation (made pursuant to section 5 of the Ordinance), the Ordinance applies to judgments from courts of countries like the Gold Coast Colony and the Colony and Protectorate of Sierra Leone, the Colony of Gambia, Barbados, Bermuda, British Guiana, Gibraltar, Grenada, Jamaica, Leeward Islands, Newfoundland, New South Wales, St. Lucia, St. Vincent, Trinidad and Tobago and Victoria. See also A. Akeredolu *et al*, ``The International Comparative Legal Guide to: Enforcement of Foreign Judgments'', 2nd Ed. (2017), p. 120, <http://www.banwo-ighodalo.com/assets/resources/d74b128b4b3cc8f435a530ce59cf7b39.pdf>, accessed on 2<sup>nd</sup> Oct. 2018.

<sup>50</sup>Section 3(2) of the 1922 Ordinance.

- b. The petition is supported by an affidavit of the facts setting out the grounds on which the applicant/judgment creditor intends to rely, exhibiting the original or Certified True Copy of the foreign judgment and other exhibits on which the applicant/judgment creditor wishes to rely.
- c. The affidavit in support of the petition shall state that, to the best of the information and belief of the deponent,<sup>51</sup> the judgment creditor is entitled to enforce the judgment and the judgment does not fall within any of the cases in which, under the 1922 Ordinance, a judgment cannot properly be ordered to be registered.
- d. The affidavit must, so far as the deponent can, give the full names, title, trade or business and usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively.
- e. The petition and the affidavit in support shall be accompanied with a written address addressing all the legal issues involved in the matter.
- f. If the court finds merit in the petition, it shall order that the foreign judgment be registered as a judgment of the Nigerian court. Upon granting leave for the registration of the foreign judgment as a judgment of the Nigerian court, the order granting leave to register the foreign judgment shall be drawn up by the court and served on the judgment debtor, stating the time within which the judgment debtor is entitled to apply to set aside the registration.

#### **2.4.2 Grounds to Challenge Foreign Judgment under the Ordinance.**

Under section 3(2) of the 1922 Ordinance, registration/enforcement of a foreign judgment may be challenged on the following grounds:

- a. That the original court acted without jurisdiction;
- b. That 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;
- c. That 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;
- d. That the judgment was obtained by fraud;
- e. That 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
- f. That the judgment was in respect of a cause of action which, for reasons of public policy<sup>52</sup> or similar reason, could not have been entertained by the registering court.

#### **2.5 Enforcement under the Act**

In order for a foreign judgment to be enforceable in Nigeria, it must be pronounced by a superior court<sup>53</sup> of the country of the original court. This applies to both civil proceedings (including awards in arbitration proceedings) and judgments given in criminal proceedings for the payment of money in respect of compensation or damages to an injured party.<sup>54</sup>

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<sup>51</sup>This holds true in cases where the deponent is not the judgment creditor.

<sup>52</sup> In the subsequent chapter, we shall briefly talk about the issue of public policy and how it is a challenge to the enforcement of foreign judgment.

<sup>53</sup> Section 2 of the Act defined superior courts in Nigeria to mean the high court of a state or of the Federal Capital Territory, Abuja or the Federal High Court.

<sup>54</sup> Section 2(1) of the Act.

The conditions for registration of foreign judgment under the Act are almost the same with those of the Ordinance only that under the Act, a judgment can be registered regardless of the fact that there is a pending appeal against it in the country where it was delivered, once the court in Nigeria is satisfied that it is final and conclusive between the parties.<sup>55</sup> To qualify for registration, the foreign judgment must be a money judgment.<sup>56</sup> The judgment must be for a sum certain. Again, the time for registration of judgment under the Ordinance is within 12 months while it is within 6 years under the Act. However, there seems to be a serious contradiction between the provision of section 3(3) of the Act and section 4(1) of the Act. While section 3(3) allows the judgment to be registered irrespective of any pending appeal, section 4(1) provides that:

A person being a judgment creditor under a judgment to which this Part of this Act applies, may apply to a superior court in Nigeria at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in such court, and on any such application the court shall, subject to proof of the prescribed matters and to other provisions of this Act, order the judgment to be registered... (Emphasis supplied)

From the provision above, it seems that such judgment cannot be registered if there is a pending appeal against such judgment in the country where it was delivered.

The Act does not provide for commencing an action for registration. Accordingly, the mode of commencement will depend on the rules of the relevant Court. Once a judgment is registered, it shall for the purposes of execution be of the same force and effect as the judgment of the registering court. Section 4(2) of the Act further provides that proceedings may be taken on a registered judgment and the judgment sum shall carry interest and that the registering court shall have the same control over execution of the judgment as if it were its own judgment.

### **2.5.1 Grounds to Challenge Foreign Judgment under the Act.**

The Act provides for circumstances in which a registered judgment may or must be set aside. Hence, a registered judgment must be set aside if the registering court is satisfied that:

- i) The judgment is not a judgment to which Part 1 of the Act applies or was registered in contravention of the provisions of the Act;
- ii) The courts of the country of the original court had no jurisdiction<sup>57</sup> in the circumstances of the case;
- iii) 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 of the original court) received notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
- iv) The judgment was obtained by fraud;
- v) The enforcement of the judgment would be contrary to public policy in Nigeria; or
- vi) The rights under the judgment are not vested in the person by whom the application for registration was made.

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<sup>55</sup> See section 3(3) of the Act.

<sup>56</sup> Section 3(2)(b) of the Act

<sup>57</sup>The conditions for the original court to assume jurisdiction both *in personam* and *in rem* under the Common Law as explain above are the same as in the Act. See section 6 (2) (a) and (b) of the Act.

### 3.0 Challenges to Enforcement of Foreign Judgments in Nigeria

There are certain provisions of the law on the subject matter of this research work that pose serious setback to international business. First, being contrary to public policy is one of the grounds for refusing to recognize and enforce foreign judgment in Nigeria. Public policy in this sense may be regarded as the local standard or rules that are not subject to alteration or derogation by parties and stands as an outside limits to the parties to contract.<sup>58</sup> It varies from one country to another. Thus a judgment arising from a contract dealing in alcoholisms may not be enforced in a very strict Islamic country because of the domestic public policy issues.<sup>59</sup> There is no specific requirement that the foreign judgment should be consistent with substantive laws in Nigeria. The problem is that most countries will hide under the guise of “contrary to public policy” to refuse the recognition and enforcement of foreign judgments. The issue of residence of the defendant is another one. The unfortunate consequence of the provision of sections 3(2)(b) of the Ordinance and 6(2)(a)(iv) of the Act, is that if the defendant is not ordinarily resident or carrying on business within the jurisdiction of the original court and did not previously agree to submit to the jurisdiction of the foreign court, he could simply ignore the proceedings against him even if duly served with the court documents and any judgment entered against him would be unenforceable on the ground that he did not submit to the jurisdiction of the court. This was the scenario in the case of *Grosvenor Casinos Ltd v Ghassan Haloui*<sup>60</sup> in that case, the judgment debtor, who was not ordinarily resident in the United Kingdom, was duly served with all the court processes in Nigeria but he simply ignored them and never submitted to the jurisdiction of the English court. He successfully set aside the registration of the judgment against him based on this provision. However, the Supreme Court criticized the provision and called for its amendment. The Court held that:

It is particularly alarming that when in a case like this, a person ordinarily resident in Nigeria obtains credit in England and in satisfaction issues a cheque which is later dishonored, 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.

The imprecision on the particular statute regulating foreign judgment enforcement has a devastating effect on the whole process of registering foreign judgment in Nigeria. For instance, the time within which to register a judgment under the Act is 6 years while the time to register a judgment under the Ordinance is 12 months. Since there is no Foreign Judgment Enforcement Rules for the Act, the Reciprocal Enforcement of Judgments Rules of the Ordinance (Rules of the Ordinance) which was enacted in 1922 regulates the legal conditions for registration of foreign judgment in Nigeria today. Rules 1 (1) and 5 of the Rules of the Ordinance which provides that the application for enforcement of foreign judgment be made by a motion *ex-parte* is inconsistent with the modern concept of fair hearing and the current civil procedure rules of courts that an adverse party must be put on notice in deserving case

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<sup>58</sup> G. C. Nwakoby, *The Law and Practice of Commercial Arbitration in Nigeria*, 2<sup>nd</sup> Ed. (Enugu: Snaap Press Ltd., 2014), p. 323.

<sup>59</sup> Alan Refern et al, *Law and Practice of International Commercial Arbitration*, (London: Sweet and Maxwell, 2004), p. 444.

<sup>60</sup> (2009) N.W.L.R. (Pt.1149), p. 309.

like this. It is without doubt that the Rules of the Ordinance is out of touch with modern realities and the different conditions in the applicable legislations have led to uncertainty.

An interesting requirement of the applicable legislations is that the defendant against whom the foreign judgment is to be enforced must have been a defendant at the original court. This requirement creates a profound difficulty for judgment creditors. With the recent economic meltdown, businesses are trying to stay afloat by merging or acquiring other companies.<sup>61</sup> To maintain a local presence, a multinational company may take over the business and goodwill of viable Nigerian company. Upon such takeover the acquired company is wound up. In this case, the fate of a judgment creditor who obtained a foreign judgment against the acquired company is now put to question. By the tenor of the Act, it means that the judgment creditor cannot maintain a cause of action against the acquiring company in respect to the judgment just because the acquiring company was not a Defendant at the original court. However, it is apposite to argue and correctly too that, since the acquiring company acquired both the assets and liabilities of the acquired company and the acquired company does not exist anymore, justice would demand that the foreign judgment obtained against the acquired company should be enforced against the acquiring company.

Another curious requirement in both the Act and the Ordinance is that foreign judgments in respect of fine, taxes and penalties cannot be enforced in Nigeria. This is against the whole concept of reciprocal treatment of judgment because it may give a safe protection to impenitent tax evaders. With the increase in tax evasion by foreign businesses and multinational companies, inability of states and government bodies to recover judgment debts in respect of fines, taxes and penalties across borders would led to a great loss of revenue. Further, the requirement that once an appeal is filed at the original court, the foreign judgment cannot be registered at the registering court, may be prejudicial to the judgment creditor.<sup>62</sup> In this situation, some unscrupulous judgment debtors may file a frivolous appeal and use it as a cloak to, forever deny the judgment creditor the fruits of his judgment. Again, the judgment debtor, while the appeal is ongoing, may outwit the judgment creditor and dissipate the *res* before outcome of the appeal at the original court, unless the court will, by order of *mareva* injunction,<sup>63</sup> preserve the *res* at the registering court pending the outcome of the appeal at the original jurisdiction.

#### 4.1 Conclusion

There is a need for the lingering crisis on the law regulating enforcement of foreign judgment in Nigeria to be settled. However, while the legal conditions for enforcement of foreign judgment have been interpreted too broadly to adequately protect the interest of international business between nationals of different countries, indeed, the section 12 of the 1961 Act manifests a clear intention on the part of the Nigerian legislature to render unenforceable in Nigeria, any judgment pronounced by a court of a foreign country which does not give due recognition to judgments delivered by Nigerian courts. Meanwhile, there has been recent

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<sup>61</sup>The recent case of Sky Bank PLC is a good example of this. The bank and another bank merged and are now one single entity known as Polaris Bank.

<sup>62</sup>See section 4(1) of the Act.

<sup>63</sup>In *A. v C.*, (1980) 2 all ER, 347, the English Court held that “the principles underlying this injunction is the prevention of an abuse, the abuse of a foreign resident causing assets to be removed from the jurisdiction in order to avoid the risk of having to satisfy any judgment which may be entered against him pending proceedings in the country”. See also *A. I. C. Ltd. v NNPC* (2005) 11 NWLR, (pt. 937), 573; Afe Babalola, *Injunction and Enforcement of Orders*, 2<sup>nd</sup> Ed. (Ibadan: Afe Babalola, 2007), p. 9.

development relating to reciprocity on the practice of the recognition and enforcement of foreign judgments. This development tends to show that the need for a conducive international business environment is now taking priority far beyond the strict practice of reciprocity in the enforcement of foreign judgments.<sup>64</sup> Elbalti argues that even if it is not abolished entirely, reciprocity no longer plays a significant role in the field of the recognition and enforcement of foreign judgments, and therefore, should not be an issue of concern for jurisdictions that accept the principle of recognition.<sup>65</sup> This is because, the test for establishing reciprocity has now become so relaxed that the requirement will normally be met if it is shown that the courts of the rendering State are likely to recognize the enforcing State's judgments. In other words, even if a country does not have the principle of reciprocity as a matter of bilateral treaty with another country, reciprocity can prove to be a serious hurdle only when it comes to the recognition of judgments rendered in a State that manifestly adheres to an unduly restrictive recognition regime such as regimes where recognition and enforcement are subject to the existence of a treaty.

#### **4.2 Recommendations**

Flowing from the above exposition, the work therefore recommends as follows:

Firstly, with the increasing expansion of government interest in foreign investment, there is high need for cross border tax collection. Nigeria will gain more if it offers herself and other states the opportunity to recover fine, taxes and penalties against evading offenders by either amending her foreign Judgment statutes to accord foreign judgments on fine, taxes and penalties the same status with monetary judgments or enter into multilateral and bilateral treaties with other states to assist themselves on recovery of cross borders fine, taxes and penalties. Secondly, the law and rules regulating the enforcement of foreign judgments in Nigeria should be amended to reflect modern realities. The courts should be proactive in breaking new grounds and developing the jurisprudence on enforcement of foreign judgment in Nigeria in accordance with the essence of reciprocity of judgments. This will improve the prospects of Nigeria as a foreign business destination and enhance the growth of her economy. It is believed that if these measures are duly considered, it will incentivize high foreign investment prospects in Nigeria.

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<sup>64</sup>Béligh Elbalti, "Reciprocity and the Recognition and Enforcement of Foreign Judgments: A lot of Bark but not much Bite", *Journal of Private International Law*, Vol. 13, Issue 1, (2017), p. 1.

<sup>65</sup>*Ibid.* P. 1.