Does a United States' Court have jurisdiction to make an order affecting immovable property in Lagos, Nigeria?

In the very recent case of *Yankey v Austin* (2020) LPELR-49540(CA) the Nigerian Court of Appeal was faced with the issue of whether a court in the United State has jurisdiction to make an order affecting immovable property in Lagos, Nigeria.

The facts of the case was that the claimant/respondent previously sued the defendant/appellant before the Family Court Division, of the District of the Fourth Judicial District, County of Hennepin, State of Minnesota ("US Court") – where they resided at the time, for dissolution of their marriage that was celebrated in Nigeria. The defendant/appellant as respondent before the US Court did not contest the dissolution of the marriage. They entered into a Mutual Termination Agreement, which is called Terms of Settlement in the Nigerian legal system. There was no trial and no evidence was adduced. Their homestead at 4104 Lakeside Avenue, Brooklyn Center, Minesota was awarded exclusively to the claimant/respondent as petitioner before the US Court. It did not end there.

The claimant/respondent subsequently instituted proceedings before the Lagos State High Court, Nigeria, and claimed joint ownership of the defendant/appellant's immovable property situated in Lagos, by relying on the US judgment. The lower court granted the claim.

The defendant/appellant appealed to the Court of Appeal, which unanimously allowed the appeal by overturning the decision of the lower court. The Court of Appeal (Ogakwu JCA) thoroughly analysed the documents which were in issue: (1) Mutual Termination Agreement, (2) Judgment of the US Court, and (3) petition for the dissolution of the parties marriage in the US Court. The Court of Appeal reached the conclusion that there was nothing in the documents in issue which suggests that the US judge granted joint ownership of the defendant/appellant's immovable property with the plaintiff/respondent. It also held that based on the principle of *lex situs* the US Court cannot make an order affecting immovable

property in Nigeria.

The decision in *Yankey* is an important decision from the perspective of public and private international law. Based on the principle of territorial sovereignty, a foreign court cannot make an order affecting immovable property in another country. This rule as applied in Nigeria – often referred to as the *Mocambique* rule – is derived from the English case of *British South Africa Company v Companhia de Mocambique* [1893] AC 602. In that case, the plaintiff s' statement of claim alleged that they were rightful owners of large tracts of land in South Africa, yet agents of the defendants unlawfully took possession of the lands and displaced the plaintiff company and its servants, agents, and tenants. The plaintiffs also alleged that the defendants not only stole the plaintiff s' personal property, but also assaulted and imprisoned some of them. It was held that an English court would not entertain an action to recover damages for a trespass to land situated abroad.

It is worth mentioning that in Nigeria, an exception to the *Mozambique* rule exists where the action between the parties is founded on some personal obligation arising out of a contract or implied contract, a fiduciary relationship, fraud or other unconscionable conduct, and does not depend on the law of the locus of the immovable property to exist (*British Bata Shoe Co Ltd v Melikian* (1956) 1 FSC 100; *Aluminium Industries Aktien Gesellschaft v Federal Board of Inland Revenue* (1971) 2 ALR Comm 121, (1971) 2 NCLR 1)

The *Mozambique* rule has been applied by the Nigerian Supreme Court only in inter-state matters such as in *Lanleyin v Rufai* (1959) 4 FSC 184. *Yankey* is the first case where it was applied in a case with truly international dimensions. Admittedly, the Court of Appeal did not explicitly mention the *Mozambique* rule or the Nigerian Supreme Court cases that have applied it in inter-state matters. The truth is that there was no need for the Court of Appeal to do so. Based on the facts of the case, the US Court never made an order for joint ownership of the immovable property in Lagos.

Yankey is a most welcome decision. If the lower court's decision was allowed to stand, it would mean that any foreign court can generally make an order affecting immovable property in Nigeria. The Court of Appeal was therefore right to hold that the US Court never made an order for joint ownership of immovable property for the parties in this case. It was also right to hold that a foreign court

cannot make an order of joint ownership of immovable property in Nigeria.