

Dubai Supreme Court Admits Reciprocity with the UK and Enforces an English Judgment

Introduction:

I have been reporting on this blog some recent cases from the Dubai Supreme Court (DSC) regarding the recognition and enforcement of foreign judgments (see [here](#), [here](#) and [here](#)). Reading these posts may have given the legitimate impression that the enforcement of foreign judgments in the UAE, and especially in Dubai, is particularly challenging. This post aims to mitigate that perception by shedding light on a very recent case in which the Dubai courts, with the approval of the DSC, ruled in favor of the enforcement of an English judgment. As the comments below indicate, this is probably the very first case in which the DSC has *positively* ruled in favor of the enforcement of an English judgment by declaring that the judgment in question met all the requirements set out in UAE law, and in particular, the reciprocity requirement.

The facts:

As mentioned above, this case concerns the enforcement of an English judgment. In that judgment, the English court ordered the division and transfer of property as part of the distribution of matrimonial property on divorce. However, some of the disputed properties concerned two immovables located in Dubai. The underlying dispute before the English court appears to involve a British national (the wife and petitioner in the Dubai proceedings, hereinafter “X”) and a Pakistani national (the respondent husband, hereinafter “Y”). The parties entered into their marriage in Pakistan in accordance with Pakistani law. The marriage was later registered in the UK “after a long period of time” since its conclusion.

According to the DSC’s decision, the English judgment recorded Y’s “consent” to transfer the two aforementioned disputed properties to X under the Matrimonial Causes Act 1973 (but erroneously referred to it as “Matrimonial Causes Act 1937”). Subsequently, X sought to enforce the English judgment in the UAE by filing a petition to that effect with the Dubai Execution Court. The Execution

Court granted the petition and ordered the enforcement of the English judgment. The decision was confirmed on appeal.

Y appealed to the DSC.

Before the DSC, Y contested the appealed decision mainly on the following grounds:

- 1) The case falls within the jurisdiction of the Dubai courts as the court of the place where the property is located, because the case concerns *in rem* rights relating to the transfer of ownership of immovable property located in Dubai, notwithstanding the fact that the foreign judgment was rendered in a personal status dispute concerning the financial effects of a divorce under English law.
- 2) The foreign judgment is contrary to public policy because it violates Islamic Sharia law, individual property rights and the distribution of property under UAE law.
- 3) The parties have not (yet) been divorced under Pakistani law or Islamic Sharia.
- 4) As the marriage was contracted in Pakistan and later registered in the UK, the marriage and its financial effects should be governed by Pakistani law.

Ruling:

In its ruling dated 25 January 2024 (*Appeal No. 592/2023*), the DSC dismissed the appeal by reasoning as follows:

First, the DSC recalled the legal framework for the enforcement of foreign judgments, citing almost verbatim Article 222 of the new Federal Civil Procedure Act of 2022 (the English translation can be found [here](#)). The DSC also recalled that the law applicable to the personal and financial effects of marriage and its dissolution, as well as the impact that public policy and Islamic Sharia may entail on the application of the governing law (articles 13 and 27 the Federal Act on Civil Transactions, as subsequently amended.*)

(* It should be noted, however, that the DSC erroneously cited the provisions in force prior to the 2020 amendment to the Federal Civil Transactions Act. This

amendment is important because it replaced the nationality of the husband as a connecting factor with the place where the marriage was concluded in matters relating to the effects and dissolution of the marriage. For a brief commentary on this amendment, see Lena-Maria Möller's post here on this blog. See also *idem*, "One Year of Civil Family Law in the United Arab Emirates: A Preliminary Assessment", *Arab Law Quarterly*, Vol. 37 (2023), pp. 5-6. The English translation of the Federal Civil Transactions Law with its latest amendments can be found here).

The DSC then approved the appealed decision in considering that:

- The foreign judgment did not contain a violation of public policy and good morals because it did not violate any undisputed Sharia rule;
- Y, who was a foreign national, had agreed in the English court to transfer the ownership and beneficial interest in the two Dubai properties to X, and therefore the enforcement of the foreign judgment consisted only in carrying out what Y had agreed before the foreign court,
- The dispute did not fall within the exclusive jurisdiction of the Dubai courts,
- Reciprocity was established with the UK.

Finally, the DSC held that the following arguments made by Y were meritless:

- that the dispute fell within the jurisdiction of the Dubai courts. However, the DSC considered that the case did not concern a dispute over the property located in Dubai, but the transfer of shares in Y's property to X on the basis of Y's consent;
- that the law applicable to the marriage and its financial effects should be Pakistani law and not English law because the marriage was contracted in Pakistan and then registered in the UK after a long period of time. However, the DSC considered that the marriage and divorce between X and Y took place in the UK and Y did not contest the application of English law.

Comments:

The case is in many regards.... *exceptional*. In particular, given the usual challenges associated with the enforcement of foreign judgments in the UAE, it is somewhat interesting to observe how the main obstacles to the enforcement of foreign judgments - notably, reciprocity, indirect jurisdiction and public policy - were easily overcome in the case at hand. (For an overview of past practice with some relevant case law, see the author's earlier comment here). While these aspects of the case (as well as some others, such as the reference to choice-of-law rules and the surprisingly erroneous reference by the DSC to the nationality of the husband as a connecting factor in matters of effects and dissolution of marriage) deserve detailed analysis, space constraints require that we focus on one notable aspect: reciprocity with the UK.

As mentioned in a previous post, Dubai courts traditionally find reciprocity where the party seeking enforcement demonstrates that the enforcement rules of the rendering state are identical to or less restrictive than those of the UAE. This typically requires the party seeking enforcement to prove the content of the rendering state's foreign judgment enforcement law for comparison with the UAE's requirements (see some relevant cases here). In order to alleviate the rigor of this rule and facilitate the enforcement of UK judgments in Dubai, the UAE Ministry of Justice (MOJ) issued a letter on September 13, 2022, stating that reciprocity with the UK could be established as English courts had accepted the enforcement of UAE judgments.

In a previous post, I expressed doubts about the impact of this letter on Dubai court practice, citing instances where the DSC had rejected to enforcement an English judgment. These doubts were somewhat justified. Indeed, in a case that later came to my attention and also involved the enforcement of an English judgment, the DSC reversed and remanded a decision of the Dubai Court of Appeal on the ground, *inter alia*, that the court failed to consider the existence of reciprocity with the UK. (The Court of Appeal simply held that reciprocity was not a requirement for the enforcement of foreign judgments in the UAE) (*DSC, Appeal No. 356/2022 of 7 December 2022*). The DSC also criticized the Court of Appeal for failing to address the need for the party seeking enforcement to prove the content of English law on the enforcement of UAE judgments in the UK in order to demonstrate that there is reciprocity with the UK. (The Court of Appeal simply considered that English courts would not oppose the enforcement of UAE judgments as long as they meet the conditions for their enforcement). Subsequent

developments in the case show that the whole issue was somehow avoided, as the Court of Appeal - as the court of remand - dismissed the case on the ground that the appeal was filed out of time. This decision was later upheld by the DSC (*Appeal No. 847/2023 of 7 November 2023*), which ultimately resulted in the upholding of the initial first instance court's decision to enforce the English judgment in question. (For details of this case, see the comments posted by one of the lawyers representing the party seeking enforcement of the English judgment, Hesham El Samra, "Enforcing the First Judgment From the English Courts in Dubai Courts (November 17, 2023). One can read with interest how the representatives of the party seeking enforcement relied on the aforementioned MOJ letter to establish reciprocity with the UK).

In the case commented here, it is unclear on what basis the Dubai courts recognized reciprocity with the United Kingdom. Indeed, the DSC merely upheld the Court of Appeal's conclusion that "reciprocity with the UK was established". It is likely, however, that the courts relied on the MOJ letter to reach this conclusion. In any event, as noted in the introduction, this case represents the first Supreme Court decision *explicitly* recognizing reciprocity with the UK. This development is likely to have a significant impact on the enforcement of English judgments in Dubai and the UAE. One can also expect that this decision may influence the assessment of reciprocity requirements where enforcement of foreign judgments in general is sought in Dubai/UAE.