Enforcing Foreign Judgments in Egypt: A Critical Examination of Two Recent Egyptian Supreme Court Cases



I. Introduction

The recognition and enforcement of foreign judgments in the MENA region can sometimes be challenging, as it often involves navigating complex legal frameworks (domestic law v. conventions). In addition, case law in this field has encountered difficulties in articulating the applicable guiding principles and is sometimes ambiguous, inconsistent, or even contradictory. Two recent decisions rendered by the Egyptian Supreme Court highlight this issue, alhoutgh – it must be admitted – the Court did provide some welcome clarifications. In any event, the cases reported here highlight some key issues in the recognition and enforcement of foreign judgment and offer valuable insights into the evolving landscape of this area of law in Egypt.

II. The Cases

1. Case 1: Ruling No. 12196 of 23 November 2024

a. Facts

The first case concerns the enforcement of a court-approved settlement deed (*saqq*) issued by a Saudi court. While the underlying facts of the case are not entirely clear, it appears that the parties involved seem to be Egyptian nationals. The original case, initiated in Saudi Arabia, concerns a claim for maintenance to be paid by the husband, 'Y' (defendant/respondent), to his wife and children, 'Xs' (plaintiffs/appellants). Before the Saudi court, the parties reached a settlement, which was recorded in a court-issued deed (*saqq*). Under this agreement, Y was obligated to pay a monthly alimony to Xs, with payment to be made by way of bank transfer to the wife's account from November 2009. However, as Y failed to make the payment and returned to Egypt, Xs filed an action before Egyptian courts in 2019 to enforce the Saudi court's settlement deed in Egypt (however, it remains unclear when Y stopped making the alimony payment or when he returned to Egypt).

The Court of first instance ruled in favor of Xs. However, the decision was overturned on appeal. Xs then appealed to the Supreme Court. According to Xs, the court of appeal refused to enforce the Saudi court's settlement deed on the grounds that it violated Islamic sharia and the Constitution. This was based on the fact that Xs continued to reside in Saudi Arabia, the children had obtained university degrees and were employed—along with their mother—in Saudi Arabia, while Y had left the country after his retirement. Xs argued that, in doing so, the Court of Appeal went beyond a formal examination of the enforcement requirements and instead engaged into re-examining the substantive merits of the case.

b. The Court's Ruling (summary):

The Supreme Court accepted the arguments made by Xs on the following grounds:

First the Supreme Court recalled the general principles governing the recognition and enforcement of foreign judgments in Egypt. It made a clear distinction between the "recognition" of foreign judgments and their "enforcement" and

determined their respective legal regimes.

Regarding the enforcement of the Saudi court-approved settlement deed, the Supreme Court considered that the deed in question was "*a final judicial decision rendered by a competent judicial authority, in the presence of both parties and after they were given the opportunity to present their defense*". Accordingly, such a judgment should be given effect in accordance with the conditions and procedures specified by Egyptian law (Arts. 296~298 of the Code of Civil Procedure (CCP)). If these conditions are met, Egyptian courts are required to declare the foreign judgment enforceable; otherwise the courts' role is limited to rejecting enforcement, without reassessing the substantive reasoning of the foreign judgment. The Court concluded that Court of appeal had gone beyond its authority by failing to adhere to the above principles and instead re-examined the judgment's reasoning.

2. Case 2: Ruling No. 2871 of 5 December 2024

a. Facts

The second case concerns the enforcement of a Kuwaiti money judgment. Here, too, the underlying facts of the case are not entirely clear. However, it appears that the dispute involved a Kuwaiti company, 'X' (plaintiff/respondent), and an Egyptian national 'Y' (defendant/appellant).

X initiated a lawsuit against Y in Kuwait, seeking the payment of a certain amount of money. Based on the arguments submitted by Y, it seems that by the time the lawsuit was filed, Y had already left Kuwait to return to Egypt. X prevailed in the Kuwaiti lawsuit and then sought to enforce the Kuwaiti judgment in Egypt.

The court of first instance ruled in favor of X and this decision was upheld on appeal. Y then appealed to the Egyptian Supreme Court. Before the Supreme Court, Y contested the lower courts' rulings on the ground that he was not properly summoned in the original Kuwaiti case, as the notification was served to the Public Prosecution in Kuwait, despite his having already left Kuwait before the lawsuit was filed.

b. The Court's Ruling (summary):

The Supreme Court accepted Y's argument on the following grounds:

The Court first recalled that proper notification of the parties is a fundamental requirement for recognizing and enforcing a foreign judgment, that is explicitly stated in Article 298(2) of the Egyptian CCP and Article 27(3) of the 2017 Judicial Cooperation Agreement between Egypt and Kuwait. The Court also referred to Article 22 of the Egyptian Civil Code (ECC), according to which procedural matters (including service of process) are governed by the law of the country where the proceedings take place.

The Court then observed that, although Y had already left Kuwait before the lawsuit was filed, the Court of Appeal ruled that the service was valid under Kuwaiti law. However, the Supreme Court emphasized that, according to Kuwaiti CCP, a summons must be served to the defendant's last known address, workplace, or residence, whether in Kuwait or abroad. This law also addresses situations where the defendant has or has not a known domicile abroad. Since Y had left Kuwait, the lower court should have verified whether the notification complied with these requirements. The Supreme Court concluded that the lower courts had incorrectly relied on notification via the Kuwaiti Public Prosecution without confirming whether this method met the requirements established by Kuwaiti law for notifying defendants abroad.

III. Comments

The reading of the two cases leaves a mixed impression.

i. On the hand, one can appreciate the general framework outlined by the Supreme Court in both decisions. Notably, in the first case, the distinction between recognition and enforcement of foreign judgments is noteworthy, as Egyptian courts have reached divergent conclusions on whether the "recognition" of foreign judgments can operate independently from their "enforcement" (for the situation in the UAE, which has a similar legal framework, see here).

Moreover, the Supreme Court's reaffirmation of the principle of prohibition of

révision au fond is also commendable. Although the principle is generally accepted in Egyptian law, what sets this case apart is that the Court did not merely affirm a general principle, but it actively overturned the appealed decision for violating it.

In the second case, the Court's correct reference to the applicable convention is particularly noteworthy, given that it has failed to do so in some previous cases (for a general overview, see my previous post here).

ii. On the other hand, the Court's approach in both cases raise certain questions, and even doubts.

a) Regarding the first case, one may question the applicability of the Court's general stance to the specific issue addressed. It should be noted that the case concerned the enforcement of a *court-approved settlement deed*, which is the equivalent to a "judicial settlement" (*sulh qadha'i – transaction judiciaire*) under Egyptian law. While foreign judicial settlements can be declared enforceable in Egypt (Article 300 of the CCP), they do not constitute – contrary to the Court's affirmation – "final judgments" *per se*, and therefore, do not carry *res judicata* effect, which – if recognized – would preclude any review of the "merits". The Court's reasoning appears difficult to justify given the longstanding position of Egyptian courts that judicial settlements lack *res judicata* effect and that the fact that they are approved by the court has no implication on their characterisation as "settlements" (and not decisions). This is because, while judicial settlements involve the intervention of the court, the court's involvement is not based on its adjudicative function but rather serve a probative purpose. The Court's failure to acknowledge this distinction is particularly striking in light of the established case law.

It is also regrettable that the Supreme Court failed to apply the correct legal framework. Indeed, both Saudi Arabia and Egypt are contracting states of the 1983 Riyadh Convention, and the case falls within its scope of application. This is particularly relevant given that the 1983 Riyadh Convention explicitly prohibits any review of the merits (Article 32), and – unlike, for example, the 2019 HCCH judgments Convention (Article 11) – allows for the *"recognition"* of judicial settlements (Article 35).

Finally, doubts remain as to whether the Supreme Court was justified in overturning the appealed decision for allegedly engaging in a prohibited *révision au fond*, or whether the Court of Appeal's approach can be considered a review of the merits at all. It should be noted that the settlement was reached in 2009, while the enforcement lawsuit was filed as decade later. Moreover, Y argued that his children had already graduated from university and were employed in Saudi Arabia. Taking this significant change of circumstances into account should not necessarily be regarded as a "review of the merits", but rather as a legitimate consideration in assessing whether enforcement remains appropriate. Therefore, such a change in circumstances could reasonably justify at least a partial refusal to enforce the Saudi court-approved settlement deed.

b) With respect to the second case, the Supreme Court's stance to overturn the appealed decision on the ground that the court of appeal failed to confirm whether the service complied with the requirements established by Kuwaiti law for notifying defendants has a number of drawbacks. Two main issues arise from this position:

(1) One might question how Egyptian judges could be more qualified than Kuwaiti judges in applying their own procedural rules, especially if it is admitted that Kuwaiti procedural law is applicable (article 22 of the ECC).

(2) The Court overlooked that the 2017 Egyptian-Kuwaiti Convention, which it explicitly cited, contains a chapter specifically dealing with service of process (Chapter II). Therefore, the validity of the service should not be evaluated based on Kuwaiti procedural law, as the Court declared, but rather in accordance with the rules established by the Convention, as the Supreme Court itself had previously ruled (see the cases cited in my previous post here) . Given that this Convention is in force, there was no need to refer to domestic law, as – according to Egyptian law – when an international convention is applicable, its provisions take precedence over conflicting national laws (Article 301 of the CCP), a principle that has been repeatedly confirmed by the Supreme Court itself on numerous occasions.