From Symbolism to Substance: Comity and Judicial Reform in South Africa's Foreign Judgments Regime

South Africa occupies a strategic position in African and Global South trade networks, yet its economy continues to lag behind its BRICS partners and many of its African peers. A recurring, if underexamined, contributor to this underperformance is the state of its private international law governing the recognition and enforcement of foreign judgments (REFJ). The article, published in the Journal of African Law (2026), investigates why and how the principle of comity might help resolve this issue.

The empirical picture is striking. Of the reported South African REFJ cases collated for this study, roughly 44 per cent of foreign judgments brought for enforcement are refused. Contrary to what one might expect, the leading cause is rarely fraud or public policy. Instead, over half of all refusals (53 per cent) turn on a single, narrow ground: the rendering court's lack of "international competence" under South African law. Under the framework laid down in *Jones v Krok* (1995), a foreign court is internationally competent only where the debtor was resident in, or voluntarily submitted to, that court's jurisdiction. Every other basis for jurisdiction recognised elsewhere – the place of contractual performance, the place where harm occurred, or a valid choice-of-court agreement standing alone- is, on the weight of authority, insufficient.

The doctrinal puzzle at the heart of the article is comity's curious position within this framework. South African courts have invoked comity rhetorically and sporadically for well over a century, from *Acutt, Blaine & Co v Colonial Marine Assurance Co* (1882) through to *Richman v Ben-Tovim* (2006) and *Government of the Republic of Zimbabwe v Fick* (2013). Yet in each instance, comity's role has been exceptional, ad hoc, and ultimately subordinate to the *ad personam* residence-or-submission requirement. Even the closest thing to an operative use of comity: *Duarte v Lissack* (1973), where enforcement followed despite the absence of personal jurisdiction, was swiftly confined and effectively overruled. The result is a doctrine that is normatively invoked but structurally inert: comity as symbol, not substance.

The article argues that this need not remain the case. Drawing on the Canadian Supreme Court's development of the "real and substantial connection" test (*Club Resorts v Van Breda*; *Chevron Corp v Yaiguaje*), it proposes a tailored adaptation for South Africa, allowing courts to recognise a foreign court's competence where a genuine and substantial connection exists between the dispute and that forum, without collapsing into an unbounded "doing justice" inquiry that risks forum shopping, particularly in cross-border IP and e-commerce disputes. To guard against the corresponding risk of default judgments enforced against debtors with only tenuous links to the foreign forum, the article further proposes strengthening the natural justice defence, requiring proof of adequate notice and a proper evidentiary basis for the judgment, bringing South Africa closer to the approach already taken in India and other Commonwealth African jurisdictions.

Finally, the article situates this proposed judicial reform in relation to the possibility of treaty accession, considering what ratification of the 2005 Hague Choice of Court Convention and the 2019 Hague Judgments Convention would mean for South Africa's REFJ regime, as the UK and Singapore have both illustrated in recent years.

The full article, including an appendix collating 39 reported South African REFJ decisions and their outcomes, is open access at the *Journal of African Law*: https://doi.org/10.1017/S0021855326101089