Mozambican Supreme Court Recognises an Indian Adoption: A Teleological Approach to the Recognition of Foreign Acts

I. Introduction

Can a foreign adoption deed be given effect in Mozambique? What procedural steps must be followed, and which requirements must be satisfied? Does the fact that the adoption takes the form of a notarial deed complicate its "recognition" in Mozambique under the applicable legal framework for the "review and confirmation of foreign judgments"? These are some of the questions addressed by the Mozambican Supreme Court in a recent decision concerning the recognition of an Indian adoption in Mozambique. The case is particularly interesting and offers valuable insights from a comparative law perspective, thus warranting closer examination.

II. The Facts

The case concerns the review and confirmation in Mozambique of an Indian public deed of adoption executed by X, a Hindu Indian woman residing in Mozambique, and approved by the competent authorities in India, in respect of A, a Hindu Indian minor girl. X sought recognition of the Indian adoption to enable her husband, an American citizen also sharing residence with X, to proceed with a separate adoption of A in Mozambique, as the court hearing his application had required the prior recognition of the Indian adoption through the ordinary procedure provided for under Mozambican law. X therefore applied to the Supreme Court for review and confirmation of the Indian adoption deed so that it could produce legal effects in Mozambique.

III. The Ruling (brief summary)

Having found that the relevant formalities had been complied with, the Court, in its ruling of 29 April 2026, recognised the Indian adoption. It first addressed whether a foreign public deed of adoption could qualify for recognition under Mozambican law. Although such a deed is not formally a judicial decision, the Court interpreted the concept of "decision" in Article 1094 of the Code of Civil Procedure (CPC) substantively, holding that a registered Indian adoption deed could qualify because of its legal effects, including the establishment of an irrevocable parent–child relationship.

The Court then examined whether the adoption satisfied the requirements for recognition under Article 1096 CPC, namely: (a) the absence of doubt as to the authenticity of the instrument and its proper interpretation; (b) its finality under Indian law; (c) the absence of fraud on the law in establishing the jurisdiction of the foreign authority; (d) the absence of conflicting pending or concluded proceedings in Mozambique, subject to the applicable rules on priority; (e) observance of procedural safeguards, including proper service, the right to be heard and equality of the parties; (f) compatibility with Mozambican international public policy; and (g) compliance with the applicable nationality privilege.

Examining each requirement in turn and addressing the legal issues arising in the context of the Indian adoption, the Court concluded that all the conditions for recognition had been satisfied. It therefore granted the application, allowing the Indian adoption deed to produce legal effects in Mozambique.

IV. Comments

1. General Remarks on the Court's Approach

The case commented on here is, in many respects, particularly interesting and offers several useful insights. The Supreme Court's discussion of the recognition requirements is detailed and well-reasoned. Indeed, as is common in the Court's practice, it begins its analysis of each issue by setting out the relevant theoretical considerations and the general position under Mozambican law before turning to the specific circumstances of the case. This approach helps explain why the judgment is comparatively lengthy. The decision also illustrates the Court's receptiveness to Portuguese legal scholarship and case law, which it draws on in addressing certain issues. As the Court explains, "Portugal has a closely related legal system and is frequently used as a doctrinal and comparative reference in Mozambique".

It is also noteworthy that the Court explicitly acknowledged the importance of a "systematic and teleological interpretation", observing that the wording of the law does not preclude such an interpretation. This is significant insofar as it allows the Court to emphasise the practical effectiveness of the recognition mechanism, its conformity with the principles of legal certainty and the protection of legitimate expectations and, more importantly, the best interests of the child, particularly where the establishment of family ties is at issue.

Against this background, two issues – among many others – deserve particular attention for the purpose of a concise blog comment. The first concerns the procedural complications arising from the absence of automatic recognition in Mozambican law. The second, and in my view the main contribution of the decision, concerns the extension of Mozambique's regime for the recognition and enforcement of foreign decisions to foreign public notarial deeds and the potential implications of the Court's reasoning for other non-judicial acts. The case also raises broader questions about the role of the HCCH conventions in facilitating the cross-border circulation of documents and addressing the challenges associated with intercountry adoption.

2. The Procedural Complications Arising from the Absence of Automatic Recognition

The first issue is the unnecessary complication of the recognition procedure resulting from the absence of the principle of automatic recognition in Mozambican law (for an overview, see my previous comments on this blog here).

As the factual background shows, X's application for recognition of the Indian adoption became necessary when her husband sought to adopt A himself. However, for his application to proceed, the Indian adoption first had to be formally recognised in Mozambique. Under Mozambican law, foreign judgments cannot produce legal effects until they have been reviewed and confirmed by the Supreme Court through the applicable recognition and enforcement procedure (for an overview, see see my previous comments here). Consequently, the proceedings concerning the husband's adoption application were stayed, and the parties were required to obtain recognition of the Indian adoption first.

While these procedural steps follow from the existing framework, which does not provide for automatic recognition, this case clearly illustrates the need to consider introducing such a principle into Mozambican law. Had automatic recognition been available, the judge hearing the husband's adoption application could have examined, as an incidental matter, whether the Indian adoption satisfied the requirements for recognition under Mozambican law and, if so, proceeded with the application without requiring the parties to initiate separate proceedings before the Supreme Court. This would have avoided an unnecessary procedural detour and facilitated the effective resolution of the adoption application.

3. The Recognition of Foreign Public Notarial Deeds: A Potential Extension to Non-Judicial Acts

The second issue, which in my view constitutes the main contribution of the decision, concerns the extension of Mozambique's regime for the recognition and enforcement of foreign decisions to foreign public notarial deeds, and the position adopted by the Court in this regard.

It is noteworthy that the Court approached this question as a preliminary issue, examining whether the foreign adoption deed was eligible for recognition and enforcement under the applicable legal framework. The Court acknowledged that the term “decision” generally refers to judicial decisions concerning private rights rendered by a foreign court. It nevertheless considered that the wording of the law did not preclude a systematic and teleological interpretation encompassing other instruments which, although not “decisions” in the strict legal sense, produce equivalent legal effects. In particular, the Court focused on whether such instruments definitively determine subjective legal positions in civil or commercial matters and possess a settled and enduring effect.

Applying this reasoning to the Indian adoption, the Court acknowledged that the adoption deed was not a judicial decision as such but considered that it shared its essential characteristics, notably the stability of the legal status it established between parent and child. The Court also addressed the concern that such an interpretation might unduly broaden the scope of the applicable legal framework. Its answer was straightforward: the interpretation did not extend the regime to instruments that were merely contractual or administrative in nature and lacked a settled effect or the capacity to determine personal status definitively. On the basis of this teleological and functional interpretation, the Court concluded that the Indian adoption deed was eligible for review and confirmation under the applicable legal framework, subject to the adjustments required by the specific nature of an adoption instrument that is not a judicial decision *per se*.

The Court’s approach is significant because it opens the door to the recognition of other foreign non-judicial acts, notably non-judicial divorces available in several European countries (on this issue, see my previous post here on this blog). The key question in such cases would be whether the foreign act shares with a judicial decision the relevant characteristics identified by the Court, particularly the definitive determination of a legal status and the stability of the legal effects produced. If these elements are present, the Court’s reasoning could provide a basis for considering such acts eligible for recognition under Mozambique’s existing legal framework.

4. Authentication, Intercountry Adoption and the Relevance of the HCCH Conventions

The case raises two distinct questions concerning the relevance of the HCCH conventions: the authentication of foreign public documents (the 1961 HCCH Apostille Convention) and the international context of intercountry adoption (the HCCH 1993 Adoption Convention). The first relates directly to the Court's reasoning, while the second offers a broader perspective on the cross-border movement of adopted children.

a) Authentication Requirements and the 1961 Apostille Convention

One of the issues raised in the case concerns compliance with the requirements of authenticity and intelligibility under Article 1096(a) CPC. The factual background provides useful insights into this issue. After X applied for recognition of the Indian adoption, she was invited to submit an authenticated and legalised copy of the adoption deed, together with any relevant explanations she considered necessary. In response, X submitted a legal opinion explaining that the adoption complied with Indian law, particularly the Hindu Adoptions and Maintenance Act (HAMA) of 1956, and filed the notarial instrument of adoption together with its translation.

The Deputy Attorney General, however, considered that X needed to take the necessary steps to obtain the signature of a Mozambican consular or diplomatic officer in India to ensure that the legalisation of the adoption deed complied with the formalities required under Mozambican law (Article 540 CPC). In addressing this issue, the Court first referred to Portuguese legal opinions according to which legalisation is no longer required, except where doubts arise as to the authenticity of the foreign document itself or that of its authentication. The Court then observed that the documents had been issued by the Indian authorities, bore the Indian government emblem and appropriate seals, and contained the signatures and fingerprints of the parties, as well as the signatures of the relevant Indian officials. It therefore found no reason to doubt the authenticity of the adoption instrument.

Accordingly, the Court held that, in the circumstances, it was unnecessary to legalise the document by obtaining, through the Mozambican Consulate in India, authentication of the signature of the official of the Registry Office who had approved the public deed of adoption. Such a step would otherwise have been

required under a strict application of Article 540 CPC.

One cannot help wondering whether these doubts and procedural complications could have been avoided had Mozambique been a Contracting State to the 1961 Apostille Convention (on the need for African countries to join the Apostille Convention, with reference to Mozambican case law, see my previous comment on this blog here). Since India is also a Contracting State since 2004, an apostille could, where the Convention applies, have facilitated the circulation of the relevant document between the two countries. The Court could then have verified the presence and validity of the apostille rather than having to examine the need for additional consular or diplomatic authentication.

b) The 1993 Adoption Convention and the Cross-Border Movement of Adopted Children

The case also invites reflection on the 1993 HCCH Adoption Convention, to which India is a Contracting State since 2003. Discussions of intercountry adoption often focus on children moving from countries in the Global South, as "States of origin" to adoptive parents in the Global North as "receiving States". The present case illustrates a different configuration: an Indian mother residing in Mozambique adopted a child in India, and the child was subsequently brought to live with her in Mozambique. It thus highlights the potential relevance of the Convention beyond the more familiar North–South context, particularly in facilitating cooperation between countries of the Global South. Had Mozambique also been a Contracting State, the Convention could potentially have provided a framework for cooperation between the two countries, subject to its conditions of application. This case therefore serves as a reminder that the HCCH conventions can contribute not only to cooperation between countries of the Global North and South, but also to strengthening legal cooperation among countries of the Global South. The 1993 Adoption Convention has already attracted significant participation in Africa, with 24 African States having joined it. This makes it one of the most widely adopted HCCH conventions on the continent.