Online Symposium on Recent Developments in African PIL (I) – Recognition and Enforcement of International Judgments in Nigeria

As previously announced, we are launching the second online symposium on ***recent developments in African private international law****. As part of this symposium, a series of blog posts addressing various aspects of recent developments in African private international law will be published on this platform over the coming days.*

We open the series with a blog post by Abubakri Yekini (Senior Lecturer in Law at the University of Manchester) and Chukwuma Samuel Adesina Okoli (Assistant Professor in Commercial Conflict of Laws at the University of Birmingham and Senior Research Associate at the Centre for Private International Law in Emerging Countries at the University of Johannesburg), focusing on ***the recognition and enforcement of international judgments in Nigeria.***

1. Introduction

Questions surrounding the recognition and enforcement of judgments have become increasingly prominent in Nigeria, both in academic writing and in practice (Yekini, 2017; Okoli and Oppong, 2021; Olawoyin, 2014; Adigun, 2019; Bamodu, 2012; Olaniyan, 2014; Amucheazi et al, 2024; PN Okoli, 2016). This development is not surprising. Nigerian individuals, companies, and public authorities are now routinely involved in disputes with cross-border elements, whether arising from international trade, investment, migration, or human rights litigation.

Nigeria operates a common law system governed by a written Constitution. The Constitution carefully allocates governmental powers among the three branches of government. Section 6 vests judicial power in the courts, while section 4 assigns legislative power to the National Assembly and State Houses of Assembly. Courts therefore play a central role in the interpretation and development of the law, but always within clearly defined constitutional limits. The Constitution and statutes enacted by the legislature form the bedrock of domestic law.

This constitutional structure has direct implications for the status of international law in Nigeria. Section 12 of the Constitution makes it clear that treaties and other international legal instruments do not become part of Nigerian law merely because Nigeria has signed or agreed to them at the international level. For such instruments to have domestic force, they must be enacted by an Act of the National Assembly. This position has long been settled and repeatedly affirmed by the courts (see *Abacha v Fawehinmi* (2000) NGSC 3).

Private international law in Nigeria largely remains judge-made, inherited from English common law as part of the received English law. Within this framework, courts have articulated principles governing when foreign judgments may be recognised, when they may be enforced, and when enforcement must be refused (*Toepher Inc of New York v. Edokpolor* (1965) All NLR 301; *Macaulay v RZB of Austria* (2003) 18 NWLR (Pt. 852) 282; *Mudasiru & Ors v. Onyearu & Ors* (2013) LPELR; *GILAR Cosmetics Store v Africa Reinsurance Corporation* (2025) LPELR-80701 (SC)).

Alongside these common law principles, there are two principal statutory regimes dealing with the recognition and enforcement of foreign judgments (*Willbros West*

Africa Inc v Mcdonnel Contract Mining Ltd (2015) All FWLR 310, 342). The statutory registration scheme is governed by the Reciprocal Enforcement of Judgments Act 1922 ("1922 Ordinance") and the Foreign Judgments (Reciprocal Enforcement) Act 1960 ("1960 Act"), but the latter is not yet in force (*Macaulay v RZB of Austria* (2003) 18 NWLR (Pt. 852) 282; *Ekpenyong v. A.G and Minister of Justice of the Federation* (2022) LPELR-57801(CA)). These frameworks have traditionally been applied to judgments of courts established under the laws of foreign states.

More recently, Nigerian courts have been confronted with judgments of international and regional courts created by treaty, most notably the ECOWAS Court of Justice (*CBN v Gegenheimer & Anor (*2025) LPELR-81477 (CA)). These courts are not courts of foreign states in the ordinary sense. Their jurisdiction derives from agreements between states, and they operate within legal systems that exist alongside, rather than within, national judicial structures. The fact that the ECOWAS Court sits in Abuja does not alter this position; it is not part of the Nigerian judicature as enumerated under section 6(5) of the Constitution.

Judgments of international courts therefore raise questions that are different in kind from those posed by judgments of foreign national courts. International courts increasingly hear cases involving Nigerian parties and Nigerian institutions. Claimants who succeed before such bodies understandably would seek to enforce their judgments before Nigerian courts, particularly where the international legal framework does not provide a direct enforcement mechanism.

It is against this background that this short article examines the recognition and enforcement of international court judgments in Nigeria. It does so by situating recent judicial developments within Nigeria's existing constitutional and legal framework and by questioning whether current approaches are consistent with the limits imposed by that framework.

2. The Existing Enforcement Frameworks in Nigerian Law

There are two main mechanisms for recognition and enforcement of foreign judgments in Nigeria. A brief overview of these mechanisms is necessary to appreciate the kinds of judgments Nigerian law already recognises and, equally importantly, those it does not.

a. Common law enforcement of foreign judgments

At common law, a foreign judgment may be enforced in Nigeria by bringing an action on the judgment itself. The judgment is treated as creating an obligation, often described as a debt, which the judgment creditor may seek to recover (*Toepher Inc of New York v. Edokpolor* (1965) All NLR 301; *Willbros West Africa Inc v Mcdonnel Contract Mining Ltd* (2015) All FWLR 310, 342). Over time, Nigerian courts have identified conditions that must be satisfied before this route is available. These include whether the foreign court had jurisdiction over the judgment debtor, whether the judgment is final and conclusive, and whether it was obtained in circumstances consistent with basic requirements of fairness (Yekini; Okoli and Oppong)).

This common law route has always been limited in scope. It was developed to deal with judgments of foreign national courts operating within recognised state legal systems. Its underlying assumptions are rooted in territoriality and sovereignty. Jurisdiction at common law is assessed through concepts such as presence, residence, or submission within the territory of a sovereign state (*Adams v. Cape Industries plc* [1990] Ch. 433). Service of process, which founds the jurisdiction of the foreign court, is itself an exercise of sovereign authority.

The common law therefore assumes a relationship between two national legal orders: the foreign court that issued the judgment and the Nigerian court asked to give it effect. International courts do not fit easily within this framework. They are not organs of any single state. Their authority derives from treaties through which states agree to submit particular categories of disputes to an international judicial body. The legal force of their judgments exists, first and foremost, at the international level. Whether such judgments can have domestic effect depends on how each state structures the relationship between its domestic law and international obligations.

Some commentators have suggested that common law principles could be extended to accommodate international court judgments (Adigun, 2019). Others have acknowledged this possibility while also highlighting the uncertainties it would create (Oppong and Niro, 2014). Whatever the merits of these arguments, the critical point for present purposes is that the common law enforcement of

judgments was never designed with international courts in mind. Extending it in this direction would require courts to resolve questions for which the common law offers no clear answers. Which international courts would qualify? Would ratification of the relevant treaty be sufficient, or would domestication be required? What defences would be available, and whose public policy would apply? (Oppong and Niro).

In the absence of legislative guidance, courts would be left to answer these questions on an ad hoc basis. That would place courts in the position of deciding which international obligations should have domestic force and on what terms. In Nigeria's constitutional framework, that is a role more properly reserved for the legislature. Unlike jurisdictions where courts are constitutionally mandated to engage in continuous development of the common law, Nigerian courts have traditionally exercised caution, particularly where the subject matter is affected by express constitutional provisions such as section 12 (cf Art 39(2) of the Constitution of the Republic of South Africa, 1996; *Government of the Republic of Zimbabwe v Fick 2013 (5) SA 325 (CC)* where the South African Constitutional Court enforced a judgment of the Southern African Development Community Tribunal against Zimbabwe by developing the common law regime. See also the Zimbabwean case of *Gramara (Private) Ltd v Government of the Republic of Zimbabwe,* Case No: X-ref HC 5483/09 (High Court, Zimbabwe, 2010).

b. Statutory regimes for foreign judgments

The limitations of the common law action on a judgment have long been recognised. Because the judgment creditor must commence fresh proceedings, jurisdiction must be established against the judgment debtor, and procedural obstacles may delay or frustrate enforcement (Yekini, 2017; Okoli and Oppong). To address these concerns, Nigerian law provides for statutory registration of foreign judgments in defined circumstances.

Two principal statutes govern this area. The first is the Reciprocal Enforcement of Foreign Judgments Ordinance 1922, Cap. 175, Laws of the Federation of Nigeria, 1958 ("1922 Ordinance"). This statute applies on a reciprocal basis to judgments from a limited number of jurisdictions, including the United Kingdom Ghana, Sierra Leone, The Gambia, Barbados, Guyana, Grenada, Jamaica, Antigua and

Barbuda, St Kitts & Nevis, St Lucia, St Vincent, Trinidad & Tobago, Newfoundland (Canada), New South Wales and Victoria (Australia). Its scope is narrow and largely historical, but it remains in force.

The second is the Foreign Judgments (Reciprocal Enforcement) Act 1960, Cap. F35, Laws of the Federation of Nigeria, 2004 ("1960 Act"). The Act was intended to replace the 1922 Ordinance and to provide a more comprehensive framework for reciprocal enforcement. It proceeds on the basis of reciprocity. Judgments from foreign countries may be registered and enforced only where the Minister of Justice is satisfied that reciprocal treatment will be accorded to Nigerian judgments and issues an order designating the relevant country and its superior courts (section 3(1)(a)).

Although Nigerian courts have, in practice, permitted registration under the 1960 Act notwithstanding the absence of formal designation (*Kerian Ikpara Obasi v. Mikson Establishment Industries Ltd* [2016] All FWLR 811), the structure of the Act would still not accommodate international courts judgments. It is concerned with judgments of courts of foreign states. It does not purport to regulate the enforcement of decisions of international courts created by treaty. The requirement of designation reflects a deliberate choice to tie enforcement to prior executive action i.e designation, rather than leaving the matter to judicial discretion. A similar conclusion was reached by the Ghanaian court in *Chude Mba v The Republic of Ghana*, Suit No HRCM/376/15 (decided 2 February 2016), where the applicant sought to enforce an ECOWAS Court judgment in Ghana. The court noted that "the ECOWAS Community Court is not stated as one of the courts to which the legislation applies" (see Oppong, 2017) for a fuller discussion of the case).

c. Treaty-based enforcement

Beyond these reciprocal regimes, Nigerian law recognises that international judgments may be enforceable where the National Assembly has chosen to give direct effect to international obligations through legislation. Arbitration provides the clearest illustration.

Nigeria signed the ICSID Convention in 1965 and enacted the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act in

1967 to give domestic effect to its obligations. That Act provides that ICSID awards are enforceable as if they were judgments of the Supreme Court of Nigeria. The result is a clear and mandatory enforcement regime that leaves little room for doubt or judicial improvisation. A similar approach is reflected in the Arbitration and Mediation Act 2023, which governs the recognition and enforcement of international arbitral awards more generally.

These examples reflect the dualist framework set by the Constitution. Where international obligations are intended to produce direct domestic effects, legislation provides the necessary legal authority. The legislature defines the scope of enforcement and the procedures to be followed. Courts are then required to apply the law as enacted. Therefore, it is crystal clear that Nigerian law has always treated the enforcement of judgments as a matter requiring domestic legal framework. This provides the backdrop against which the enforcement of international court judgments must be assessed.

3. CBN V. Gegenheimer & Anor (2025) LPELR-81477(CA) – The Nigerian Case

In May 2025, the Nigerian Court of Appeal had the opportunity, for the first time as far as we are aware, to engage directly with the question of the enforcement of international court judgments in Nigeria. The case arose from a monetary judgment of ?63,650,925.00 and USD 10,000 made by the ECOWAS Court of Justice against Nigerian authorities following a successful human rights claim. The judgment creditor subsequently approached the Federal High Court to register and enforce that award, which ultimately led to garnishee proceedings against funds held by the Central Bank of Nigeria.

For present purposes, the central issue was whether Nigerian courts had jurisdiction to enforce a judgment of the ECOWAS Court. More specifically, one of the complaints before the Court of Appeal was whether the 1st Respondent had complied with the conditions precedent for the enforcement the ECOWAS judgment, notwithstanding the requirements stated in section 4 of the 1960 Act, particularly the requirement relating to the conversion of foreign currency into Naira, and whether the judgment could be enforced in the absence of express domestic legislation authorising such enforcement.

The Court of Appeal answered these questions in the affirmative. In doing so, it reasoned as follows:

> *It is of common knowledge that the ECOWAS Court of Justice, established in 1991 and located in Abuja, hears cases from West African States, including Nigeria. It was created pursuant to Articles 6 and 15 of the Revised Treaty of ECOWAS. Its organisational framework, functioning, powers, and applicable procedures are set out in Protocol A/P1/7/91 of 6 July 1991; Supplementary Protocol A/SP21/01/05 of 19 January 2005; Supplementary Protocol A/SP.2/06/06 of 14 June 2006; Regulation of 3 June 2002; and Supplementary Regulation C/Reg.2/06/06 of 13 June 2006. In other words, its jurisdiction covers Nigeria. Accordingly, the argument by learned counsel for the Appellant that Nigeria did not domesticate the ECOWAS Court Treaty, Protocol, and Supplementary Protocols is lame.*

The Court further observed that the ECOWAS Court Protocol, particularly the 1991 Protocol as amended by the 2005 Supplementary Protocol, establishes the ECOWAS Community Court of Justice as the principal legal organ of ECOWAS, outlines its mandate, jurisdiction, functioning, and procedures, grants it competence over human rights violations within member states, and allows individuals to approach the Court directly without exhausting local remedies.

The Court also upheld the trial court's conclusion that non-compliance with section 4(3) of the 1960 Act does not rob the court of jurisdiction to enforce the judgment.

What appears clear from the decision is that the ECOWAS judgment was effectively registered and enforced on the basis of the ECOWAS Supplementary Protocol A/SP21/01/05 of 19 January 2005, Supplementary Protocol A/SP.2/06/06 of 14 June 2006, Regulation of 3 June 2002, and Supplementary Regulation C/Reg.2/06/06 of 13 June 2006, with a passing reference to the 1960 Act to indicate that the judgment nothing under the Act robs the court off its jurisdiction.

That reasoning is difficult to sustain. The first difficulty lies in the Court's treatment of domestication. The fact that Nigeria has accepted the jurisdiction of

the ECOWAS Court answers the international question of competence; it does not answer the domestic question of enforcement. Jurisdiction determines whether the Court may hear a case and issue a judgment at the international level. It does not determine whether that judgment can be enforced within Nigeria. These are distinct matters. In a dualist constitutional system, the latter inquiry depends on the existence of domestic law authorising enforcement.

The Court did not identify any Nigerian statute that performs this function. Instead, it relied on the existence of ECOWAS instruments themselves. This approach blurs the distinction between international obligation and domestic law. It assumes that once Nigeria is bound internationally, domestic courts may act without further domestication. That assumption runs directly against Nigeria's constitutional structure, particularly section 12 of the Constitution.

Equally problematic is the suggestion that the physical location of the ECOWAS Court in Abuja makes any legal difference. International courts frequently sit within the territory of member states without becoming part of the host state's judicial system. The ECOWAS Court is not a Nigerian court, at least within the meaning of section 6 of the 1999 Constitution, and its judgments are not Nigerian judgments. Treating them as such because the Court sits in Abuja has no legal foundation. Jurisdiction at the international level determines whether a court may hear a case; it does not determine whether its judgment can be executed against assets or institutions within Nigeria. Physical location is therefore irrelevant. A court may sit in Abuja and still operate entirely outside the Nigerian legal system, as is the case with the ECOWAS Court.

The second difficulty concerns the Court's reference to the 1960 Act. The proceedings proceeded as though the ECOWAS judgment could be situated within Nigeria's foreign judgment enforcement regime. Yet, as discussed earlier, the Act was designed to deal with judgments of courts of foreign states and operates on the basis of reciprocity. The ECOWAS Court does not, and could not realistically, fall within that category. It is not a court of a foreign country, and it has never been designated under the Act. One would therefore have expected the Court to be explicit that the Act does not apply to the judgment in question. Instead, citing provisions of the Act in determining whether the trial court had jurisdiction risks creating the impression that the statutory regime is equally applicable to questions arising from the enforcement of international court judgments. This is an impression that is difficult to reconcile with the structure of the legislation.

This critique should not be misunderstood. It is not a denial of Nigeria's international obligations, nor is it an argument that successful claimants before international courts should be left without remedies. The point being made is that domestic courts must act within the established legal framework, particularly in an area where foreign judgments do not have direct force of law except as permitted by statute or common law.

Ghanaian courts have consistently emphasised the country's dualist constitutional structure, under which international and regional judgments are not binding domestically unless the underlying treaty or enforcement framework has been incorporated into Ghanaian law by legislation. In *Republic v High Court (Commercial Division), ex parte Attorney General and NML Capital Ltd* Civil Motion No. J5/10/2013 (unreported), the Supreme Court held that, in the absence of domestic legislation giving effect to the United Nations Convention on the Law of the Sea ("UNCLOS"), orders of the International Tribunal for the Law of the Sea were not binding on Ghana, notwithstanding Ghana's international obligations. Similarly, in *Chude Mba v Republic of Ghana* (*supra*), where enforcement of an ECOWAS Community Court judgment was sought, the High Court confined its analysis strictly to the statutory regime, namely the Courts Act 1993, the High Court (Civil Procedure) Rules 2004, and the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument 1993, and concluded that enforcement was unavailable because the regime depends on reciprocity and presidential designation of the foreign court, which were absent. Notably, in both instances the courts did not consider the common law regime for the recognition or enforcement of foreign or international judgments, treating the issue as one governed exclusively by statute and constitutional principles of dualism.

A similar outcome was reached in a very recent case in *Anudo Ochieng Anudo v Attorney General of the United Republic of Tanzania,* where the High Court of Tanzania declined to register and enforce a judgment of the African Court on Human and Peoples' Rights, holding that such judgments fall outside the scope of Tanzania's Reciprocal Enforcement of Foreign Judgments Act (Cap. 8 of the Laws of Tanzania, 2019). The court, *inter alia*, ruled that the Act applies only to judgments of foreign superior courts designated by ministerial notice and does not extend to international or regional courts established by treaty, including the African Court. Because the applicant anchored his claim exclusively on the Act

and did not plead constitutional or international law as an independent basis for enforcement, the court held itself bound by the pleadings and precedent confirming that African Court judgments cannot be enforced under the statutory regime absent express legislative authorisation.

The decision of the Court of Appeal in *CBN v Gegenheimer*, with respect, is therefore a misnomer, as it lacks a solid legal foundation within Nigeria's existing constitutional and statutory framework. Whether judgments of international courts ought to be enforceable in Nigeria is ultimately a question for the legislature. Until such laws are enacted, courts should be cautious about assuming powers they have not been granted.

4. Conclusion

It is clear that judgments of international courts are not enforceable in Nigeria in the absence of specific legal framework permitting their enforcement. The position is well illustrated by the International Centre for Settlement of Investment Disputes (Enforcement of Awards) Act 1967 and, more recently, the Arbitration and Mediation Act 2023, both of which demonstrate how Nigeria gives domestic effect to international obligations when it intends to do so.

The common law route is ill-suited to international court judgments. It was developed for judgments of foreign state courts and rests on assumptions of territorial jurisdiction and sovereignty that do not translate easily to treaty-based international courts. Extending it in this direction would leave courts to determine, without legislative guidance, which international judgments are enforceable and on what terms.

The decision in *CBN v Gegenheimer* is distinctive because it concerns the ECOWAS Court, a regional court whose jurisdiction Nigeria has accepted and whose role in access to justice is well recognised. Even so, acceptance of jurisdiction at the international level does not resolve the domestic enforcement question. Section 12 of the Constitution remains a barrier to direct enforcement in the absence of domestication. For that reason, the decision may yet face serious difficulty if the issue reaches the Supreme Court.

Beyond the ECOWAS context, it is difficult to see how judgments of other

international courts could presently be enforced in Nigeria without similar legislative intervention. If international court judgments are to have domestic effect, the solution lies not in judicial improvisation, but in clear legislative action.