Online Symposium on Recent Developments in African PIL (III) – Foreign Judgments in Mozambique through the Lens of the Enforcement of a Chinese Judgment: Liberal Practice in the Shadow of Statutory Rigidity



As part of the second online symposium on ***recent developments in African private international law****, we are pleased to present the third contribution, prepared by* ***Béligh Elbalti (The University of Osaka, Japan)****, on* ***Foreign Judgments in Mozambique through the Lens of the Enforcement of a Chinese Judgment: Liberal Practice in the Shadow of Statutory Rigidity****.*

I. Introduction

The purpose of this note is to briefly introduce the recognition and enforcement regime in Mozambique based on a recent case decided by the Mozambican Supreme Court (*Tribunal Supremo*).

It aims modestly to help fill a gap in legal literature. Indeed, scholarly work on

Mozambican private international law in general, and on the recognition and enforcement of foreign judgments in particular, remains extremely limited (For an overview on Mozambican private international law system, see D Moura Vicente, 'Mozambique' *in* J Basedow *et al.* (eds.), *Encyclopedia of Private International Law – Vol. III* (Elgar, 2017) 2354).

The note also seeks to shed light on recognition and enforcement practice in a country that has largely remained outside the radar of comparative law scholars and researchers.

It is hoped that this contribution will encourage more detailed and in-depth studies that do justice to a legal system which appears, despite some anachronistic aspects of its legal regime, to have one of the most liberal enforcement practices in Africa.

II. The Case

The case presented here concerns the enforcement in Mozambique of a Chinese judgment in a dispute involving two Chinese citizens resident in Mozambique. The underlying factual background may be summarized as follows.

The dispute appears to have arisen from a breach of contractual obligation. The applicant, X, initially tried to recover the debt in Mozambique by initiating execution proceedings against Y (the respondent) for payment of a sum of money (*ação executiva para pagamento de quantia certa*). However, the Mozambican court upheld the objections to execution (*embargos à execução*) filed by Y and dismissed the execution for lack of evidence prove the existence of an enforceable title or establishing the alleged debt.

X subsequently initiated civil condemnation proceedings (*processo de Condenação Civil*) in China, claiming damages for breach of contract, and obtained in his favor a judgment ordering Y to pay damages. Armed with a final Chinese judgment, X sought its enforcement in Mozambique by bringing an action for review and confirmation (*revisão e confirmação*).

Y challenged the review and confirmation of the foreign judgment on the grounds that there is an identity between the prior execution proceedings in Mozambique

and the confirmation proceedings. X replied that the two actions differed in terms of the legal effects sought (the execution proceedings concerned the compulsory payment of a debt and not concerned with the review and confirmation of a foreign judgment) and cause of action (the execution proceedings were based on the alleged existence of an enforceable title, whereas the confirmation proceedings were based on the existence of a foreign judgment requiring recognition and enforcement).

III. The Ruling

In deciding this issue, the Mozambican Supreme Court rules as follows (*Case No. 75/2024-C of 25 April 2025*).

The Court first cited the relevant provision of the CCP setting out the conditions for the recognition and enforcement of foreign judgments in Mozambique (Article 1096). Under that provision, a foreign judgment may be declared enforceable (confirmed) only if seven conditions are satisfied:

- a) the authenticity and intelligibility of the decision;
  b) the final and binding character of the judgment in the State of origin;
  c) the jurisdiction of the foreign court under Mozambican rules on conflicts of jurisdiction;
  d) the absence of *lis pendens* or *res judicata* arising from proceedings before Mozambican courts, unless the foreign court was first seized;
  e) proper service of the defendant;
  f) compliance with Mozambican public policy; and
  g) where the judgment is rendered against a Mozambican national, respect for Mozambican substantive law where applicable under Mozambican conflict-of-laws rules.

Then the Court moved to examine each of the above conditions, with a special focus on the legal issue raised by the parties, ruling as follows (detailed summary):

> *Mozambique applies a delibation (delibação) system for the recognition of foreign judgments. Under this system, focus is placed on compliance with formal requirements laid down by Article 1096. There is therefore no review of*

the merits, except with regard to a possible violation of public policy or domestic private law where the judgment was rendered against a Mozambican national (the so-called nationality privilege).

Regarding the requirement of authenticity and intelligibility, the judgment was duly legalized and raises no doubts as to its intelligibility.

Accordingly, the requirement of Article 1096(a) is satisfied

Regarding finality, this requirement is presumed to be satisfied in the absence of evidence to the contrary. Since the presumption was not rebutted, the requirement under Article 1096(b) is satisfied.

Regarding the jurisdiction of the foreign court, Mozambican law predominantly follows the bilateral (mirror-image) theory, according to which a foreign court is internationally competent if a Mozambican court would have had jurisdiction in comparable circumstances. The case concerned a contractual claim for damages. Under Mozambican rules of international jurisdiction, such claims fall within the jurisdiction of the courts of the place of performance of the obligation. As the obligation was to be performed in the State of origin, the foreign court was internationally competent for the purposes of Article 1096(c).

Accordingly, the requirement of Article 1096(c) is also satisfied.

Regarding the issue of res judicata disputed by the parties, this requirement aims to prevent contradictory effects within the Mozambican legal order by barring enforcement where a Mozambican court has already rendered a final decision on the same dispute, involving the same parties, claim, and cause of action, as that decided by the foreign court. For this purpose, the comparison for determining whether the res judicata exception exists is not between the action for the enforcement of the foreign judgment (action for review and confirmation) and another action brought before Mozambican courts. Rather, res judicata, for the purposes of recognition and enforcement of foreign judgments, results from a comparison between the action decided by the foreign court (which resulted in the judgment sought to be declared enforceable) and the action decided by Mozambican courts concerning the

same dispute. In the present case, although Y alleged the existence of res judicata based on earlier Mozambican proceedings, he failed to establish the required identity of parties, claim, and cause of action.

Accordingly, the requirement under Article 1096(d) is satisfied.

Regarding proper service, both the applicant and the respondent had the opportunity to participate in the foreign proceedings.

Accordingly, the requirement under Article 1096(e) is also satisfied.

Regarding public policy, the foreign judgment in question does not contravene Mozambican public policy principles, as civil liability for damage resulting from breach of legal transactions is an institution widely accepted in Mozambique.

Finally, with regard to the requirement under Article 1096(g), since both parties are Chinese nationals, the judgment was not rendered against a Mozambican national, the nationality privilege does not arise, rendering this provision inapplicable.

IV. Comments

The decision of the Mozambican Supreme Court is both interesting and significant in several respects, two of which are particularly noteworthy. First, it is interesting because it reproduces various elements discussed in literature, notably in an article published in 2022 by M. Muchanga,[i] who also serves as the President of the Mozambican Supreme Court (A M Muchanga, 'Reconhecimento de Sentenças Estrangeiras em Matéria de Direito Privado na Ordem Jurídica Moçambicana' 1 *O Embondeiro: Revista Dos Tribunais* (2022) 15).

The decision is also significant because it does not only clarify some general principles underlying the recognition and enforcement of foreign judgments in Mozambique (1), but also it sheds further light on the specific conditions applicable to their recognition and enforcement (2).

1. General Principles underlying the Recognition and Enforcement of Foreign Judgments in Mozambique

a) Applicable legal framework

Mozambican law in the field of the recognition and enforcement of foreign judgments, and private international law more generally, is not merely inspired by Portuguese law; it is, in fact, Portuguese law, extended to Mozambique when it was one of Portugal's overseas (*ultramar*) territories. Regarding the recognition and enforcement of foreign judgments, the relevant rules are contained in the Portuguese CCP of 1961 (*Código de Processo Civil*), whose application was extended to Mozambique in 1962 (Articles 1094–1101). This legal framework, inherited at independence in 1975, continues to govern the recognition and enforcement of foreign judgments in Mozambique. These rules are particularly significant given the extremely limited number of conventions concluded by Mozambique (e.g., the 1990 Mozambican–Portuguese Convention on Legal and Judicial Assistance), which, in practice, are generally not invoked by the courts, even in situations where international conventions would, in principle, apply.

b) Reciprocity not required

Recognition and enforcement in Mozambique do not depend on the existence of reciprocity. Judgments rendered in states where recognition and enforcement are themselves subject to a reciprocity requirement, such as China (Article 299 of the Chinese CCP), do not appear to encounter particular difficulties when enforcement is sought in Mozambique, as the present case clearly illustrates. Other cases show a similar practice, with judgments from countries requiring reciprocity (such as Germany and the UAE (Dubai)) being smoothly recognized and enforced in Mozambique.

It is also worth mentioning that the Supreme Court of Mozambique concluded in 2018 a Memorandum of Understanding (MoU) with the Supreme People's Court of the People's Republic of China, which, i*nter alia*, aims to facilitate the

recognition and enforcement of judgments in both countries (Article 4). However, this MoU does not appear to have played any decisive role, either directly or indirectly, in the outcome of the present case.

c) Necessity for review and confirmation procedure

Giving effect to foreign judgments in Mozambique is based on the so-called *delibation* (*delibação*) system, i.e. a process of individualized review through which foreign judgments would be admitted or not to produce their legal effects in the forum, including *res judicata* effects (Muchanga, *op.cit.*, 21). This confirms, along with other relevant provisions in the CCP (Article 497(4), 1094(1)), that foreign judgment do not enjoy *de plano* effect (automatic recognition) in Mozambique.

d) No review of the merits

As a matter of principle, review of the merits is not permitted, and the case law of the Supreme Court is fairly consistent on this point. This principle, however, admits two notable exceptions, as indicated in the decision: public policy and the so-called nationality privilege (Muchanga, *op. cit.*, at 21). As the present case clearly illustrates, review of the merits is only exceptionally engaged on public-policy grounds. By contrast, review of the merits becomes more relevant in connection with the nationality privilege, notably in the application of Article 1096(g). Here again, as will be shown below, the case law of the Supreme Court is far from turning this requirement into an insurmountable hurdle, even where the foreign decision (including arbitral awards) is rendered against a Mozambican national.

2. Requirements for the Recognition and Enforcement in Mozambique

According to Article 1101 of the CCP, the court dealing with recognition and enforcement requests should not only examine *ex officio* certain requirements (notably those relating to authenticity, public policy, and the nationality privilege) but should also, on its own motion, refuse recognition and enforcement if, upon

examination of the case file, it appears that any of the other statutory requirements are not satisfied. For this reason, although the parties' submissions focused primarily on the fulfilment of one specific requirement, the Supreme Court nonetheless examined whether all the remaining conditions were met. This approach is consistent with the Court's established practice, which systematically undertakes a comprehensive review of all statutory requirements for recognition and enforcement.

Below is a brief overview of the recognition and enforcement requirements as set out in Article 1096 of the CCP, considered in light of the Supreme Court's practice.

a) Authenticity and intelligibility

The authenticity requirement relates essentially to the origin of the foreign judgment (Muchanga, *op. cit.*, at 25). Typically, authenticity is verified through the process of legalization in accordance with the applicable legal provisions (notably Article 540 of the CCP). Supreme Court case law shows that the Court often requests the party seeking enforcement to provide the necessary legalization when it is not included in the initial application. As for intelligibility, this concerns the clarity and comprehensibility of the foreign decision (Muchanga, *op. cit.*, at 26). Several Supreme Court decisions indicate that this requirement applies particularly to the operative part of the judgment.

b) Finality

In Mozambique, courts generally recognise and enforce only foreign judgments that are final under the law of the State of origin as repeatedly confirmed by the Supreme Court. Proof of the finality of the foreign judgment takes the form of a certificate attesting that the judgment has become final and binding under the law of the country of origin. However, as the present case shows, the Supreme Court considered that finality is presumed even in the absence of documentary evidence establishing it. This presumption may nevertheless be rebutted by the respondent through the submission of appropriate evidence.

c) Indirect jurisdiction.

One of the most important clarifications concerns the standard by which the jurisdictional requirement is to be assessed. Contrary to what has been suggested in some scholarly writings,[ii] the jurisdiction of the foreign court must be assessed by reference to Mozambican rules of direct jurisdiction, in the sense that a foreign court is regarded as competent if, in comparable circumstances, Mozambican courts would have assumed jurisdiction. This approach is commonly described as the bilateralisation of rules of direct jurisdiction, or – more widely known – the mirror-image principle (Muchanga, *op. cit.*, at 28).

d) *Res judicata* and *Lis pendens,* or Conflicting Judgments and Proceedings

In the context of the recognition and enforcement of foreign judgments, the defence of *lis pendens* applies where a foreign judgment was rendered while proceedings were still pending before Mozambican courts, whereas the defence of *res judicata* applies where a Mozambican court has already rendered a final and binding judgment on the same matter. In such cases, the foreign judgment may be denied recognition and enforcement, as its admission would either undermine Mozambican proceedings or judgments, or eventually result in two contradictory final judgments producing effects within the Mozambican legal order (Muchanga, *op. cit.*, at 30).

The application of both the *lis pendens* and *res judicata* defences requires identity between the foreign and domestic actions with respect to the parties, the claim, and the cause of action (Article 498(1) of the CCP). Accordingly, the *res judicata* defence was not admitted when the party resisting enforcement of a foreign divorce judgment awarding parental authority and alimony invoked the existence of a Mozambican judgment that had only declared the dissolution of the marriage.

The significance of the present case lies in the Supreme Court's clarification that the *res judicata* defence should be assessed based on a comparison between the action adjudicated by the foreign court and the action previously decided by Mozambican courts, rather than between the review-and-confirmation

proceedings and the local action.

e) Service and right to defence

While Article 1096(e) primarily refers to proper service, this provision is generally understood broadly to encompass not only the defendant's right to be duly informed of the proceedings but also the right to a genuine opportunity to be heard (Muchanga, *op. cit.*, at 31). This interpretation is confirmed by the present decision, in which the Supreme Court focused on the parties' opportunity to participate in the foreign proceedings. Case law shows that, in line with the wording of Article 1096(e), where Mozambican law dispenses with initial service, there is no need to verify whether the defendant was formally served. It also shows that defects or irregularities in service can be cured if the losing party actively participated in the proceedings before the foreign courts.

f) Public policy

In the present case, the Supreme Court found no violations of Mozambican public policy, understood in the literature as "international public policy" (*ordem pública internacional*), which concerns "the fundamental principles structuring the Mozambican legal order" (Muchanga, *op. cit.*, at 31–32). It is worth noting that, while the Supreme Court has recognized public policy as an exception to the principle prohibiting review of the merits, in other cases it has addressed public policy from the perspective of the effects (*efeitos*) of foreign judgments, which should not be intolerable for the Mozambican legal order.

g) Choice-of-law test or the privilege of nationality

This is one of the most emblematic requirements in the Mozambican enforcement regime inherited from Portuguese law. Under this provision, foreign judgments rendered against Mozambican nationals must not contravene Mozambican private law where, under Mozambican conflict-of-laws rules, Mozambican law would have applied. This is commonly known as the "privilege of nationality." (Muchanga, *op. cit.*, at 21, 31).

What is remarkable in Mozambican practice is that, despite the anachronistic nature of this requirement,[iii] it has played a relatively limited role. Case law shows that the privilege operates only if two conditions are met: (1) Mozambican law governs the dispute according to Mozambican conflict-of-laws rules; and (2) the judgment was rendered against a Mozambican national, i.e., the unsuccessful party in the foreign proceedings.

Accordingly, as the present decision shows, when the foreign judgment concerns only foreign parties, this provision does not apply. This approach is also extended to cases in which a foreign judgment cannot technically be regarded as rendered against a Mozambican national, such as non-contentious proceedings. In such situations, the Supreme Court has found the requirements of Article 1096(g) to be satisfied.

Second, and most importantly, the privilege applies only when Mozambican law should have been applied under Mozambican choice-of-law rules. Accordingly, if the foreign law applied by the court of origin corresponds to the law that would be applicable under Mozambican rules, the privilege of nationality does not apply, even if the judgment is rendered against a Mozambican national. In these situations, the Supreme Court has frequently concluded that there is no inconsistency with Mozambican private law and that the requirement in Article 1096(g) is satisfied. The scope of this exception is considerable, notably in international commercial contracts, where party autonomy is generally recognized and fully upheld by Mozambican courts.[iv]

V. Concluding Remarks – Peculiarities of the Recognition and Enforcement Practice in Mozambique

As mentioned above, Mozambican law in the field of the recognition and enforcement of foreign judgments is of Portuguese origin. It therefore appears quite natural that Mozambican scholars, and even judges of the Mozambican Supreme Court, rely heavily on Portuguese case law and scholarly writings when interpreting and applying Mozambican law and the inherited Portuguese legal framework. This is more so given the scarcity of legal literature and scholarly writings in the field.

This state of affairs seems to justify the strong temptation to view the legal

framework in force in Mozambique – as well as in other Lusophone countries, particularly in Africa[v] – through Portuguese lenses, which may lead one to assume that Mozambican private international law is identical to that applicable (or formerly applicable) in Portugal (except of course where Portugal has since moved beyond the rules left in its former colonies).

This approach nevertheless suffers from some serious shortcomings. First, due to the over-reliance on Portuguese literature and case law, the solutions developed by the Mozambican Supreme Court remain largely unknown. Second, such reliance also risks superimposing an external legal perspective on Mozambican judicial and practical realities. By way of illustration, the Portuguese legal framework governing the recognition and enforcement of foreign judgments is often portrayed in literature as allowing, under certain circumstances, a review of the merits and control over the law applied by the foreign court.[vi] These features have frequently been criticized as constituting a "serious obstacle to the recognition of foreign judgments" in Portugal.[vii] It has indeed been observed that, in Portuguese practice, choice-of-law control operates so as to bar a significant number of enforcement cases.[viii] If one were to assume that a similar approach prevails in Mozambique, one would expect comparable obstacles to the recognition and enforcement of foreign judgments before Mozambican courts.[ix]

Available case law, however, presents a completely different picture. An examination of approximately 28 decisions of the Mozambican Supreme Court concerning the recognition and enforcement of foreign judgments between 2013 and 2025 shows that, excluding the few cases rejected on purely procedural grounds or subsequently withdrawn, the success rate of enforcement applications is remarkable: 100%.

Those cases also show that foreign judgments from various counties, including Germany, France, Spain, Portugal, England, South Africa, Australia, UAE (Dubai) and China, all were recognized and enforced, often without any particular difficulty, with the court sometimes simply enumerating the recognition and enforcement requirements and concluding that they were all satisfied. Moreover, although the nationality privilege is often examined in the Supreme Court's decisions, the available cases indicate that it has not constituted a serious obstacle to the recognition and enforcement of foreign judgments.

These observations highlight the importance of consulting local case law rather

than relying solely on assumptions drawn from other jurisdictions. Careful study of domestic practice provides valuable insights for both legal scholars and practitioners,[x] and contributes to a more accurate understanding of how foreign judgments are recognized and enforced in practice, within their local legal context and environment.

Previous contributions:

1. **Online Symposium on Recent Developments in African Private International Law**, *by Béligh Elbalti & Chukwuma S.A. Okoli* (Introductory post)
2. **Recognition and Enforcement of International Judgments in Nigeria**, *by Abubakri Yekini & Chukwuma Samuel Adesina Okoli*
3. **The Recognition and Enforcement of Foreign Judgments within the CEMAC Zone**, *by Boris Awa*

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[i] M. Muchanga, who also a university lecturer, has been involved in many of reported foreign judgments enforcement cases, including the one commented on here.

[ii] See eg, R F Oppong, 'Private International Law and the African Economic Community: A Plea for Greater Attention' 55 *International & Comparative Law Quarterly* (2006) 917, explaining that the 'international jurisdiction of the foreign court will…be recognized only when the court of the forum did not claim jurisdiction of its own over the subject-matter'. The formulation suggests that the indirect jurisdiction of the foreign court would be denied whenever the jurisdiction of the Mozambican courts is justified according to its own rules of direct jurisdiction.

[iii] See F K. Juenger, 'The Recognition of Money Judgments in Civil and Commercial Matters' 36 *AJCL* (1988) 34.

[iv] On the issue of the law applicable to commercial contracts in Mozambique, see R Dias and C F Nordmeier, 'Angola and Mozambique', *in* D Girsberger et al. (eds.), *Choice of Law in International Commercial Contracts: Global Perspectives*

on the Hague Principles (OUP, 2021) 265.

[v] Lusophone countries are countries or territories where Portuguese is an official language. African Lusophone countries include Mozambique, Angola, Cape Verde, Guinea-Bissau, São Tomé and Príncipe. Outside Africa they include, in addition to Portugal, Brazil, East Timor and Macau (China).

[vi] See eg S P. Baumgartner, 'How Well Do U.S. Judgments Fare in Europe?' 40 *The Geo. Wash. Int'l L. Rev.* (2008) 187, 228.

[vii] S P. Baumgartner, 'Understanding the Obstacles to the Recognition and Enforcement of U.S. Judgments Abroad' 45 *International Law and Politics* (2013) 978.

[viii] See C M D Da Silva, 'De la reconnaissance et de l'exécution des jugements étrangers au Portugal (hors du cqdre de l'application des conventions de Bruxelles et de Lugano)', *in* G Walter and S P. Baumgartner (eds.), *Recognition and Enforcement of Judgments Outside the Scope of the Brussels and Lugano Conventions* (Kluwer Law International, 2000) 481.

[ix] See eg R Dias and C F Nordmeier, 'Private International Law of Contracts in Angola and Mozambique' 37 *Obiter* (2016) 138.

[x] In this sense also, A Boris, 'The Recognition and Enforcement of Foreign Judgments within the CEMAC Zone', on this blog.