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CALAIS SHIPHOLDING COMPANY V. BRONWEN ENGERY TRADING LTD

(2014) LPELR-23122(CA)

COURT OF APPEAL

(LAGOS JUDICIAL DIVISION)

CALAIS SHIPHOLDING COMPANY v. BRONWEN ENGERY TRADING LIMITED
CITATION: (2014) LPELR-23122(CA)

In The Court of Appeal
(Lagos Judicial Division)
On Tuesday, the 6th day of May, 2014
Suit No: CA/L/53/2011

Before Their Lordships

JOSEPH SHAGBAOR IKYEGH	Justice, Court of Appeal
RITA NOSHAKARE PEMU	Justice, Court of Appeal
SAMUEL CHUKWUDUMEBI OSEJI	Justice, Court of Appeal

Between

CALAIS SHIPHOLDING CO. — **Appellant**

And

BRONWEN ENGERY TRADING LIMITED (Of THE COMMONWEALTH OF DOMINICA) (Charterer of the MT "Amor") — **Respondent**

RATIO DECIDENDI

1 **INTERPRETATION OF STATUTE - CONSTRUCTION OF STATUTE:** Primary rule of construction of statute

"The primary rule of construction of statute is the literal construction which requires that we give the words used in a statute, and only those words, their ordinary and natural meaning, omitting no words and adding none, in the construction we arrive at, except in accordance with the recognized rules of construction. See NWAKIRE Vs COP (1992) 6 SCNJ 1; EGBE VS YUSUF (1992) NWLR (PT 245) 1; OKUMAGBE Vs EGBE (1965) 1 AUNCR 62. However, it is also germane that in construing the provisions of the statute, to have in mind the clearly defined objectives of such statute. See OLARENWAJU VS GOVERNOR OF OYO STATE (1992) 11/12 SCNJ 92, herein, it was also held by the Apex Court that where the words of a statute are clear and unambiguous, the ordinary meaning of the words used are to be adopted, except where this will lead to absurdity or injustice citing JEROKUN VS ADELEKE (1950) 5 FSC 126, (1960) SCNLR 267 and AHMED VS KASSIM (1958) 3 FSC 51 or (1958) SCNLR 28. See also ANSALAO (NIG) LTD VS NATIONAL PROVIDENT FUND MANAGEMENT

BOARD (1991) 2 NWLR (PT.174) 392 where the court held that:- "Where an interpretation of a statute will result in defeating the object of the statute, the court will not lend its weight to such interpretation. The language of the statute must not be stretched to defeat the aim of the statute"." Per OSEJI, J.C.A. (Pp. 28-29, paras. A-A) - read in context

2 **PRACTICE AND PROCEDURE - EX PARTE APPLICATIONS:** Consequence of an application exparte made by the appellant to the High Court of England after a final award by the Arbitration tribunal

"...it is my finding and I so hold that the application exparte made by the appellant to the High Court of England after a final award by the Arbitration tribunal in England, does not constitute a proceeding in which the Respondent is a Defendant requiring service of the process of the original court as to bring it within the contemplation of section 3(2)(c) of the Reciprocal Enforcement of Judgment Ordinance Cap. 175, 1958." Per OSEJI, J.C.A. (P. 30, paras. E-G) - read in context

3 **ARBITRATION - REGISTRATION OF FOREIGN AWARDS:** Whether an arbitral award obtained anywhere in the world can be registered and recognized by any court in Nigeria

"...that the Arbitration and Conciliation Act provided a simpler and much easier approach to the registration in Nigeria, of such foreign awards. It provides in section 51(1) as follows:- "An arbitral award shall irrespective of the country in which it is made, be recognized as binding and subject to this section and section 32 of this Act, Shall, upon application in writing be enforced by the court". Thus, subject to section 32 and 51(2) of the Arbitration and Conciliation Act, an arbitral award obtained anywhere in the world can be registered and recognized by any court in Nigeria without recourse to a foreign court to first adopt same as it's judgment. See OGBUNEKE SONS AND COMPANY LTD VS ED & F (NIG) LTD (2010) LPELR (4688) CA" Per OSEJI, J.C.A. (P. 30, paras. A-E) - read in context

SAMUEL CHUKWUDUMEBI OSEJI, J.C.A. (Delivering The Leading Judgment): This is an appeal against the judgment of the Federal High Court Lagos division delivered on the 18-6-2010 by Hon. Justice M. B. Idris wherein the plaintiffs petition to register a foreign judgment was dismissed.

The Appellant in this appeal was the petitioner in the lower court, while the Respondent herein was

the Respondent also in the lower court.

A The parties were involved in a dispute relating to shipping transactions and subsequently submitted themselves to Arbitration proceedings in England which culminated in a final award made by the B arbitrators in favour of the appellant herein. By an application exparte, the appellant applied to a commercial court, Queens Bench Division of the High Court of Justice, England for the Arbitration C award to be made the judgment of the said court and which, application was duly granted on the 18th day of September 2008.

D Thereafter, the appellant by an originating petition dated 13-8-2009 applied to the Federal High Court, Lagos Division, hereafter referred to as the (trial court) to register and enforce the said judgment obtained in the commercial court, Queens Bench E Division of the high court of England in the Following manner:-

(a) Leave that the said judgment made by the Hon. Justice Steel of the Queens Bench F Division, commercial court, of the High Court of England on 18th September 2008 be registered and enforced as the judgment of the Federal High Court, Lagos pursuant to section 3 of the Reciprocal Enforcement of G judgments ordinance, Cap.175. Laws of the Federation of Nigeria, 1958

(b) Judgment ordering the above named judgment debtor to pay the petitioner:

A

A **(a) E17,687.50 (seventeen Thousand Six hundred and Eighty Seven Pounds and Fifty Pence) together with compound interest at the annual rate of 7.25% calculated at quarterly rest from 17 July 2008 until that date of Payment**

B **(b) US$3,402,856.34 (Three Million Four Hundred and Two Thousand Eight Hundred and Fifty six United States Dollars and Thirty-Four cents) together with compound**

C **interest thereon at the annual rate of 7.25% calculated at quarterly rest from 17 June 2008 until the date of payment by or on behalf of Bronwen**

D **(c) US$13,792.00 (Thirteen Thousand seven Hundred and Ninety-Two United States Dollars) together with compound interest thereon at the annual rate of 7.25% calculated at quarterly rest from 17 June 2008 until the**

E **date of payment by or on behalf of Bronwen**

(d) US$27,843.85 (Twenty Seven Thousand Eight Hundred and Forty Three united state Dollars and Eighty-six cents) together with

F **compound interest thereon at the annual rate of 7.25% calculated at quarterly rest from 19 June 2008 until the date of payment by or on behalf of Bronwen**

G **(e) E43,569.82 (forty-three Thousand, Six Hundred and Sixty-Nine Pounds Sterling and Eighty-two pence), together with interest thereon at a commercial rate of 7.25% per annum' compounded at three-monthly**

A

intervals from 12 May 2008 until the date of payment by or on behalf of Bronwen.

(f) GB E25.774.37. (Twenty Five Thousand, Seven Hundred and seventy Four Pounds sterling and Thirty -one Pence), together with interest thereon at a commercial rate of 7.25% per annum, compounded at three monthly intervals from 17 June 2008 until the date of payment by or on behalf of Bronwen.

(g) E16,952.40 together with interest thereof at a rate of 7.25% per annum, compounded at three monthly intervals, with effect from the date of this award until the date of reimbursement by or on behalf of Bronwen.

(h) From an including the 18 June, 2008, the future fees of Messrs Femi Atoyebi & co. incurred by Calais and arising out of or in connection with Bronwen's breaches of the Charter Party including the instigation and maintenance of proceeding in Nigeria and the Vessels arrest there.

From and including the 18 June, 2008 until the date when the Vessel was released from arrest, being 28 July 2008, the daily rate Bronwen is liable to Calais for the Vessel's detention in the sum of US$15,397.54 (Fifteen Thousand Three Hundred and Ninety Seven United States Dollar and Fifty Four Cents) totaling US$631,299.14.

(i) For the period from and including the 18 June, 2008 until the date when the Vessel was released from arrest, being 28 July, 2008, the

weekly rate of US$424.00 (Four Hundred and Twenty-Four United States Dollars) for the Security Guards, totalling US$17,384.00.

(j) For the period from and including the 20 June, 2008 until the date when the Vessel was released from arrest, being 28 July, 2008, such amount (net) as the Hellenic Mutual War Risks Association (Bermuda) Limited invoices to Calais in respect of the additional premiums for the insurance of the vessel against war risks and for which the calais has incurred a liability for the War Risk Premium with copies of such invoices or other vouchers verifying the amount due, to be provided by Calais to Bronwen and if the parties are unable to agree, either party may apply to the tribunal for the amount of the liability for War Risks Premiums to be determined by the tribunal, such application to be made within 28 days of the Vessel's release from arrest.

(k) Cost of judgment

(2) The petitioner contends that the aforementioned judgment:-

(a) May be registered by this honorable court under the provisions of section 3 of the Reciprocal Enforcement of Judgments Ordinance, Cap L75, Laws of federation of Nigeria and

(b) Remains unsatisfied in the sums of US$4093,175.34 and G8E104,084.03 being the total principal judgment sums, remaining outstanding

(3) Unless the aforementioned judgment is registered as a judgment of the High Court of Nigeria pursuant to section 3 of the Reciprocal Enforcement of Judgment Ordinance, Cap 175, Laws of the Federation of Nigeria 1958 aforesaid so that the same may be enforced in Nigeria, the petitioner will not be able to recover in full from the judgment debtor the aforementioned judgment sums of US$4,093,175.34 and GBE104,084.03.

The petition was supported by a 30 paragraph affidavit deposed to by one Bukola Ade-Makanju, and attached to the said affidavit are Exhibits FA1 to FA6 together with a written address.

The Respondent opposed the petition by filing a counter affidavit deposed to by one Taiwo Ganzello and attached to it are Exhibits AB to AB3. A written address also accompanied the counter affidavit

The appellant also filed a reply to the counter affidavit as well as a written address in reply on points of law.

The parties subsequently adopted their respective written addresses and in a judgment delivered on 18th June 2010, the trial court dismissed the petition for failure to comply with the provision of section 3(2) (c) of the Reciprocal Enforcement of judgment Ordinance. In this regard the court at page 172-173 of the Record held as follows:-

"It is not in dispute that the Judgment of the English High Court now sought to be registered was obtained ex-parte in line with English Law. The effect of the provision of section "3(2) (c) is that a Judgment obtained ex-parte cannot be registered in Nigeria. Unfortunately, I have examined the available authorities on the issue, and none appears to have addressed this point. No authority was also referred to the Court on this point. In the circumstances, the court shall act <u>ex abundant cautela</u> - out of abundant caution, to be on the safe side. This Court shall act <u>exacta diligentia</u> - with great care.

For this reason, I hold the view that this petition ought not to be registered because it falls within the ambit of section 3 (2) (c) of the Reciprocal Enforcement of Judgment Ordinance, and it is therefore not registrable. The petition fails and it is hereby dismissed."

Being aggrieved with the said judgment the Appellant filed a Notice of Appeal dated and filed on 2-7-2010. It contains four grounds of appeal which shorn of their particulars reads as follows:-

<u>Ground 1</u>

The learned trial Judge erred in law when, after having found that it was not in dispute that the judgment of the English High Court sought to be registered in Nigeria by the Petitioner/ Appellant was obtained ex-parte in

line with English law, nevertheless proceeded to hold that the same judgment was not registerable in Nigeria by virtue of the provision of Section 3(2)(c) of the Reciprocal Enforcement of Judgments Ordinance, Cap. 175, Laws of the Federation of Nigeria, 1958.

Ground 2

The learned trial misdirected himself in law when he stated at page 20 of his judgment that

...the registration of any foreign judgment shall be guided by the laws of Nigeria and no other law. In deciding whether the judgment is registerable and enforceable in Nigeria reference would be made to Nigerian Law...

and came to the wrong conclusion thereby occasioning a miscarriage of justice to the Petitioner/ Appellant.

Ground 3

The learned trial Judge erred in law when he held at page 22 of his judgment that:-

"I hold the view that this petition ought not to be registered because it falls within the ambit of section 3(2)(c) of the Reciprocal Enforcement of Judgments Ordinance, and it is therefore not registerable."

Ground 4

The learned trial Judge erred in law holding that the Respondent ought to have been

served with the processes of the High Court of England before the judgment of the court thereof could be registerable by the court below when it was clear to him that the English High Court was not the original court in the circumstance as it merely granted the Appellant permission to recognize and enforce the Arbitral Award in the same manner as a judgment of the English High Court and did not function in its original jurisdiction in the matter.

Parties subsequently in compliance with the Rules of this court filed and served their respective briefs of Argument.

The Appellant's brief of Argument settled by Ayo Olorunfemi and Bukola Ade Mkanju (miss) is dated and filed on 18-8-2011, while the appellants reply brief settled by Ayo Olorunfemi and Rotimi Amuwo Esq., was dated and filed on 27-2-2013.

The Respondent's brief of argument filed on 26-1-2012 but deemed properly filed on 14-2-2013 was settled by Chinwendum Nwaohiri (miss).

In the appellant's brief of argument four issues were formulated for determination, to wit:-

(1) Was the learned trial Judge right or wrong, when, after having found that it was not in dispute that the Judgment of the English High Court sought to be registered in

Nigeria by the Petitioner/ Appellant was obtained ex-parte in line with the English Law, nevertheless proceeded to hold that the same judgment was not registerable in Nigeria by virtue of the provision of section 3(2) (c) of the Reciprocal Enforcement of Judgment Ordinance, Cap. 175, Laws of the Federation of Nigeria, 1958

(Ground 1)

(2) Whether the decision of the learned trial judge that only Nigerian law applied to the Appellant's case before him has not occasioned a miscarriage of justice to the Appellants particularly in view of the provision of Section 2 of the Reciprocal Enforcement of Judgments Ordinance, Cap 175, laws of the Federation of Nigeria, 1958 which makes English law (the law in place where the Arbitral Award was made) relevant and therefore applicable in the Appellants case.

(Ground 2)

(3) Does Section 3 (2) (c) of the Reciprocal Enforcement of Judgments Ordinance, Cap. 175, Laws of the Federation of Nigeria, 1958 operate to bar the registration of the Judgment of the English High court recognizing Arbitral Award obtained in England under English Law with the full participation of both Parties.

(Ground 3)

(4) Was the learned trial Judge right or wrong in holding that the Respondent ought to have been served with the processes of the High Court of England before the judgment of the court thereof could be registerable by the court below when it was clear to him that the English High Court was not the Original court as it merely granted t he Appellant permission to recognize and enforce the Arbitral Award in the same manner as a judgment of the English High court and did not function in its original Jurisdiction in the matter?

(Ground 4)

In the Respondents brief of argument two issues were distilled for determination as follows:-

"(1) Whether the High court of England is the "original Court" within the contemplation of section 3(2)(c) of the Reciprocal Enforcement of Judgment Ordinance Cap 175, Laws of the Federation of Nigeria 1958

(2) if the answer to issue No. 1 is in the affirmative, whether the learned trial judge was right in dismissing the petition in the circumstance"

I have carefully perused the four Grounds of Appeal, the parties brief of argument as well as the judgment of the trial court and I find that the two issues as raised in the Respondents brief of

argument are quite apt to and will adequately resolve the issue in contention between the Parties.

This is also in the light of the judgment of the trial court being appealed against. It clearly and succinctly addressed the 'issues raised before it and infact found in favour of the appellant in all of them except for the interpretation of section 3(2) (c) of the Reciprocal Enforcement of Judgment Ordinance which the trial court under an atmosphere of uncertainty decided to err on the side of caution. This is evidenced in the judgment of the trial court where it held at page 172 to 173 as follows:-

"It is not in dispute that he judgment of the English High Court now sought to be registered was obtained exparte in line with English law. The effect of the provision of section 3(2)(c) is that a judgment obtained exparte cannot be registered in Nigeria. Unfortunately, I have examined the available authorities on this issue and none appears to have addressed this point. No authority was also referred to the court on this point. In the circumstances, the court shall act ex abundant Cautela- out of abundance of caution, to be on the safe side. This court shall act exacta diligentia- with great care.

For this reason, I hold the view that this petition ought not be registered because it falls within the ambit of section 3(2)(c) of the Reciprocal Enforcement of the Judgment Ordinance, and it is therefore not registrable.

The portion fails and is hereby dismissed".

From the above reproduced portion of the judgment of the trial court, the only narrow issue for resolution between the parties is as to the correct interpretation of section 3(2)(c) of the aforementioned ordinance.

The myriad of issues raised in the appellants brief can only ignite an unnecessary expedition into the sphere of needless academic discuss. It is unarguably a circuitous way of getting to the substance of the matter that calls for resolution. The Respondent hit the nail on the head in the two issues formulated in its brief of argument and I am happily inclined to adopt same in the determination of this appeal, moreso that they are fully addressed in the appellants issues No. 4

ISSUE No. 1

Whether the High Court of England is the "original court" within the contemplation of section 3(2)(c) of the Reciprocal Enforcement of the Judgment Ordinance Cap 175, Laws of the Federation of Nigeria, 1958.

Dwelling on this issue, it was submitted by the appellant's counsel that this matter did not emanate from the English Court but rather emanated from an arbitration proceeding in which both parties duly and fully participated and an award made by the arbitration tribunal. He added

that the Respondent did infact submit a counter claim before the arbitration Tribunal which was eventually dismissed.

It was noted that the reason for the refusal by the trial court to register the judgment obtained from the High Court of England was because it offends section 3(2)(c) of the Reciprocal Enforcement of the Judgment Ordinance. The processes filed in the English court having not been served on the Respondent.

It was contended that the situation in this case is not like where the matter originated from the English Court, rather it was a direct result of arbitration proceedings culminating in an award. He added that the sole reliance by the trial Judge on section 3(2)(c) is completely misconceived because the said section ought to be read together with section 2 of the same Ordinance to know which law to consider- which in this case would have been the law in the place where the arbitration award was made, which is in England.

It was learned counsel's stance that the relevant and applicable laws in Nigeria is the Reciprocal Enforcement of Judgment Ordinance and the purport of section 2, thereof is that the court is enjoined to have recourse to the position in England, particularly on the facts of this matter where it was an arbitral award that was transformed into a judgment of the English high Court in accordance with English law. Reliance was then placed on **TULIP NIGERIA LTD VS**

NOLEGGIDE TRANSPORT MARITIME SAS (2011) 4 NWLR (PT.1237) 254 at 282-283, also section 6.6 (1) of the English Arbitration Act 1996 and part 62, Rule 62:8 of the Civil Procedure Rules 1998.

He also referred to Nigerian Statutory provisions that provide that an application for leave to enforce a judgment or award on arbitration can be made exparte. They are:- Order 1 Rule (1) of the Reciprocal Enforcement of judgment Rules, Cap 175 LFN 1958 and Order 54 Rule 15(1) of the Federal High Court (Civil Procedure) Rules 2009.

He further contended that the decision of the trial court was reached per incuriam having not properly considered the position in England where the award was made as required by section 2 of Cap 175 LFN 1958 and which positions was recognized by this court in **TULIP (NIG) LTD VS NOLEGGIDE TRANSPORT MARITIME SAS** supra

Furthermore, learned counsel raised the query that:-can the High Court of Justice England be said to be the "original court" in the circumstance of this case considering the fact that the petitioner herein commenced arbitration proceedings and the Respondent put on notice and it did not only participate but also filed a counter claim?"

He also noted that the phrase, "Original Court" was defined in Section 2 of the 1958 Ordinance to

mean;
'The court by which the judgment was given".

He also referred to the Chambers Dictionary new edition and Webster's Universal Dictionary and Thesaurus, 2007 on the definition of the word "original"

It was further submitted that the circumstance under which section 3(2)(c) of the Ordinance can be made to apply would be where the process was meant to be served but was not served on the judgment debtor but not were provision is made for the application exparte to make an arbitral award the judgment of the court.

He added that words in statutes are to be construed in their usual grammatical sense unless the context otherwise requires. Therefore he says, the peculiar facts of this case would reveal that the petitioner complied with the provisions of the Ordinance in following the procedure in England before obtaining the judgment being sought to be registered.

It was also submitted that it will be unreasonable to suggest that the High Court of Justice, England is the original court when the provisions of Section 2 of the ordinance contemplates a situation where an award could be elevated to a judgment as in the case of **TULIP (NIG) LTD** which recognizes that an award may be registered exparte as a judgment of the High Court.

Learned Counsel then urged that Sections 2 and 3(2)(c) of Cap. 175 LFN 1958 be read together to

interpret the provision in such a way to avoid absurdity and reflect the intention of the legislature. See **AWE VS ALABI (1970) 2 ALL NCR 16 COUNCIL OF UNIVERSITY OF IBADAN vs ADAMOLEKUN (1967) 1 ALL NLR 213; AG KWARA STATE vs ABOLAJI (2009) 7 NWLR (PT.1139) 199 C.A and ARARUME vs INEC (2007) 9 NWLR (PT 1038) 127.**

A number of authorities were also cited on the principle that where the words of a statute are manifestly ambiguous, the court has a duty to give them a meaning that will resonate with commonsense or that a court, when interpreting a statute should not attach to the provisions of the Statute a meaning that the words of the Statute cannot reasonably bear".

This court was then urged to set aside the decision of the trial Court.

Responding on this issue, learned counsel for the Respondent noted that the appellants counsel's submission that the "Original Court" is the Arbitral tribunal is to say the least misconceived. He submitted that where the words of a statute are precise and unambiguous, they must be given their natural and ordinary meaning as the words of a statute best declare the intention of the law makers.

He added that the words ..."the process of the

original court".....as regards the appellant's petition/this appeal, can only be referring to the English High court and not the arbitral tribunal for the reasons that:-

(a)"By virtue of Section 2 of the Ordinance, an award only becomes a judgment when it becomes enforceable in the same manner as a judgment given by the court' in that place.

(b)"Original Court" is defined in Section 2 as meaning in relation to any judgment"--- the court by which the judgment is given".

It was further submitted that since an award is not a judgment until it is made a judgment of the high court, an "original court" means the court by which the judgment was given, it remains to be seen how the Arbitration tribunal can be original court instead of the English Court by which the judgment which was sought to be registered at the lower court was given.

He added that the use of the phrase "ordinarily resident or carrying out business within jurisdiction of the court" in section 3(2)(c) of the Ordinance can only refer to the English High court and not the tribunal because an arbitral tribunal has no territorial jurisdiction within which any party may reside or carry on business unlike the court's jurisdiction.

Dwelling on the Respondents issue two which was also covered in the appellant's issue four, learned counsel for the Respondent referred to section 3(2)(a)-(f) of t he Reciprocal Enforcement of the Judgment Ordinance, Cap 175 LFN 1958 to submit

that the sub sections are to be read disjunctively and not conjunctively, hence, where a foreign judgment sought to be registered in Nigeria is not in compliance with any of t he subsections, the judgment will not be registered.

He added that since the arbitral award was made the judgment of the High court of England through an application exparte, it is in clear breach of Section 3(2)(c) of the Ordinance not withstanding that it complied with the requirements of the English law.

It was therefore submitted that the trial Court was right in dismissing the petition on the ground that the judgment was obtained exparte with the consequence that the Respondent was not served with the process of the High Court of England. This court was therefore urged to dismiss the appeal.

In the appellants reply brief of argument, it was submitted in response to Respondents issue (1) that it will be absurd to consider only the provisions of section 3(2)(c) of the said Ordinance without adverting to the provisions of Section 2 thereof which makes an arbitral award that has been elevated to the status of a judgment of the English court also registrable in Nigeria. He added that such judgment would include an arbitral award involving both parties which was registered as the judgment of an English court by virtue of an application granted exparte by the same court and this would amount to compliance with the provisions of Section 2 of the ordinance.

He therefore urged this court to read Sections 2

and 3(2)(c) of the Ordinance Cap 175 together and interprets them in manner that will reflect the intention of the legislature as per the decisions in **A. G KWARA STATE VS ABOLAJI** supra and **ARARUME VS INEC** supra.

Learned counsel further noted that there is clearly an omission in the provisions of Section 3(2)(c) of the Ordinance with regard to the judgment of the High Court that was obtained by virtue of an application for leave to convert an arbitral award to the judgment of the High Court, in which case he urged this court to supply the omission by holding that it is only where the court acted within its original jurisdiction that it's processes must be duly served on the defendants. Reference was then made to **OLALEYE-OTE VS BABALOLA (2012) 6 NWLR (PT.1297) 574 at 593 and NOTHMAN vs BARNET COUNCIL (1978) 1 WLR 220 at 227**.

The same submission was adopted in response to the Respondents issue No. 2 with further reference to the following statutes and rules.

(i) Section 66 of the English Arbitration Act 1996

(ii) Part 62, Rule 62:18 of the English Civil Procedure Rules, 1998

(iii) Order 52, Rule 16 (1) of the Federal High Court procedure Rules 2009

(iv) Order L Rule 1(1) of the Reciprocal Enforcement of Judgment Rules Cap. 175 LFN 1958

He then submitted that the learned trial Judge was wrong to have dismissed the Appellants petition and urged this court to follow the appeal.

As earlier stated, the issue in contention in this appeal is confined within the narrow context of the proper interpretation of the provisions of section 3(2)(c) of the Reciprocal Enforcement of Judgment Ordinance, Cap. 175 LFN 1958.

The learned trial Judge, in this regard did not conceal his dilemma in reaching a decision on the issue and opted to err on the side of caution wherein he held as follows as pages 172 to 173 of the record:-

"**It is not in dispute the Judgment of the English High Court now sought to be registered was obtained ex-parte in line with English law. The effect of the provision of section 3(2)(c) is that a judgment obtained ex-parte cannot be registered in Nigeria. Unfortunately, I have examined the available authorities on this issue, and none appears to have addressed this point. No authority was also referred to the Court on this point. In the circumstances, the Court shall act ex abundanti cautela - out of abundant caution, to be on the safe side. This Court shall act exacta diligentia- with great care.**

For this reason, I hold the view that this petition ought not be registered because it falls within the ambit of section 3(2)(c) of the

reciprocal Enforcement of Judgment Ordinance, and it is therefore not registerable. The petition fails and it is hereby dismissed".

In this regard it will be germane to set out the provisions of the said section 3(2) of the Reciprocal Enforcement of Judgment Ordinance, Cap. 175 LFN 1958 with a view understanding its true intent and purpose. It reads:-

Section 3(2):-"no judgment shall be ordered to be registered under this ordinance if-

(a) The original court acted without jurisdiction.

(b) The judgment debtors, being a person who has neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court, or

(c) The judgment debtor being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of the court, or

(d) The judgment was obtained by fraud; or

(e) The judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal against the judgment, or

(f) The judgment was in respect of a cause of action which for reasons of public policy or for some other similar reasons could not have been entertained by the registering court".

The contention of the Respondent which the learned trial judge agreed with, is that the arbitral award was made the judgment of the High Court of England pursuant to an exparte application and by virtue of section 3(2)(c) of the Ordinance, the processes of the High Court of England ought to have been served on the Respondent before the award was made a judgment of the said court.

For the appellant Section 3(2)(c) must be read together with section 2 of the said Ordinance in order to get the issue properly addressed.

Now section 3(2)(c) is the bone of contention and it is herein below reproduce again:-

Section 3(2)

"**No judgment shall be ordered to be registered under the ordinance if----------**

(c) The judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court, and did not appear, not withstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court".

For the Respondent, the wordings of the above paragraph (c) above appears to elicit a literal interpretation which the lower court in the absence of any existing authority decided to adopt and as a consequence, dismissed the petition before it. The question then is when is a party a "defendant" in an action and what constitutes the "process of the original court".

To my mind therefore the import of paragraph (c) of section 3(2) is that it envisages a situation where a formal trial or hearing had taken place in the court and the process necessary for the hearing of the matter were not served on the party who is the defendant. In other words, a judgment obtained in a court of trial by a plaintiff in the absence of the defendant who was not duly served with the necessary processes and afforded the opportunity to react to it and defend the allegation against him is precluded from registration as a foreign judgment under section 3(2)(c).

Put in another way, any claim before a court of trial which is eventually granted by the said court (Original Court) without the Defendant against whom such claim is made being served with the processes or made aware of the said claim cannot subsequently be registered as a foreign judgment in any court in Nigeria.

It seems to me that the intention of the legislature here is to safeguard the interest of a judgment

debtor against any frivolous or suspicious judgment being registered and executed against him without having been duly served with the processes connected with the claim in the foreign country.

The primary rule of construction of statute is the literal construction which requires that we give the words used in a statute, and only those words, their ordinary and natural meaning, omitting no words and adding none, in the construction we arrive at, except in accordance with the recognized rules of construction. See **NWAKIRE Vs COP (1992) 6 SCNJ 1; EGBE VS YUSUF (1992) NWLR (PT 245) 1; OKUMAGBE Vs EGBE (1965) 1 AUNCR 62.**

However, it is also germane that in construing the provisions of the statute, to have in mind the clearly defined objectives of such statute. See **OLARENWAJU VS GOVERNOR OF OYO STATE (1992) 11/12 SCNJ 92**, herein, it was also held by the Apex Court that where the words of a statute are clear and unambiguous, the ordinary meaning of the words used are to be adopted, except where this will lead to absurdity or injustice citing **JEROKUN VS ADELEKE (1950) 5 FSC 126, (1960) SCNLR 267 and AHMED VS KASSIM (1958) 3 FSC 51 or (1958) SCNLR 28.**

See also ANSALAO (NIG) LTD VS NATIONAL PROVIDENT FUND MANAGEMENT BOARD (1991) 2 NWLR (PT.174) 392 where the court held that:-

"**Where an interpretation of a statute will**

result in defeating the object of the statute, the court will not lend its weight to such interpretation. The language of the statute must not be stretched to defeat the aim of the statute".

On the strength of the above cited authorities, this court refuses to add its weight to a simplistic interpretation of Section 3(2)(c) of the said Ordinance to the extent of defeating its aim and objective given the fact that such an approach will be absurd and engender injustice.

Though the hearing and determination of the dispute between the parties took place in an arbitration tribunal which record shows that both parties duly participated and the respondent even filed a counter claim thereat, the said tribunal can be likened to the original court where the respondent was the defendant and against whom the final award was made.

This put paid to the dispute between the parties in the absence of any objection or appeal against the award. The venture to the High Court of England by the appellant was to register the final award of the arbitration tribunal as a judgment of the said court for the purpose of enforcement and the English Rules allow such application to be made exparte. This to my mind is not out of place as there was nothing else left, save for the judgment debtor to

comply with the award or for the judgment creditor to apply to enforce the said award.

Little wonder then, that the Arbitration and Conciliation Act provided a simpler and much easier approach to the registration in Nigeria, of such foreign awards. It provides in section 51(1) as follows:-

"**An arbitral award shall irrespective of the country in which it is made, be recognized as binding and subject to this section and section 32 of this Act, Shall, upon application in writing be enforced by the court".**

Thus, subject to section 32 and 51(2) of the Arbitration and Conciliation Act, an arbitral award obtained anywhere in the world can be registered and recognized by any court in Nigeria without recourse to a foreign court to first adopt same as it's judgment. See OGBUNEKE SONS AND COMPANY LTD VS ED & F (NIG) LTD (2010) LPELR (4688) CA

Be that as it may, it is my finding and I so hold that the application exparte made by the appellant to the High Court of England after a final award by the Arbitration tribunal in England, does not constitute a proceeding in which the Respondent is a Defendant requiring service of the process of the original court as to bring it within the contemplation of section 3(2)(c) of the Reciprocal Enforcement of Judgment Ordinance Cap. 175, 1958. This issue is therefore resolved in favour of the appellant.

On issue No.2 which is whether the learned trial judge was right in dismissing the petition in the circumstances. Having resolved issue No.1 in favour of the appellant, the answer that will naturally flow therefrom, is that the learned trial judge erred in dismissing the petition on the basis that it did not satisfy the requirement of section 3(2)(c) of the Reciprocal Enforcement of Judgment Ordinance, Cap.175 LFN 1958. All the salient points have been addressed in the course of consideration of issue No.1 consequently; it will amount to unwarranted repetition to go through the points again.

In the final result, I hold that the appeal is meritorious and it is accordingly allowed.

The judgment of the Federal High Court delivered on the 18th day of June 2010 by M. B. Idris J. is hereby set aside.

It is hereby ordered that the judgment of t he High Court of Justice, England, Queens Bench Division, Commercial court, dated 18th day of September 2008 be registered as a judgment of the Federal; High Court Lagos Division.

N50,000 cost is awarded in favour of the Appellant.

JOSEPH SHAGBAOR IKYEGH, J.C.A.: I agree.

RITA NOSAKHARE PEMU, J.C.A.: I had the advantage of reading in draft the lead Judgment just delivered by my brother **SAMUEL**

CHUKWUDUMEBI OSEJI, J.C.A. and I agree with his opinion and conclusion.

A

The appeal is meritorious and same is hereby allowed for the reasons adumbrated in the lead Judgment.

B

The Judgment of Hon. Justice M. B. Idris delivered on the 18th day of June 2010 is hereby set aside.
I abide by the consequential order made as to costs.

C

D

Appearances

Ayo Olorunfemi with Rotimi Anuwo Esq.	**For Appellant**
A. B. Sulu-Gambari	**For Respondent**

LAWpavilion

POWERED BY:

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