

Enforcement of Foreign Judgments

Contributing editor
Patrick Doris



2019

GETTING THE
DEAL THROUGH

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Patrick Doris

Gibson, Dunn & Crutcher UK LLP

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Preface

Enforcement of Foreign Judgments 2019

Eighth edition

Getting the Deal Through is delighted to publish the eighth edition of *Enforcement of Foreign Judgments*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ghana and Russia.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Patrick Doris of Gibson, Dunn & Crutcher UK LLP, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
August 2018

Nigeria

Etigwe Uwa SAN, Adeyinka Aderemi and Chinasa Unaegbunam

Streamsaunders & Köhn

1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?

At present, Nigeria is not a signatory to any multilateral or bilateral treaties for the reciprocal recognition and enforcement of foreign judgments. Foreign judgments are enforced in Nigeria by virtue of the Foreign Judgments (Reciprocal Enforcement) Act, Chapter F35, Laws of the Federation of Nigeria 2004 (the 2004 Act) and the Reciprocal Enforcement of Judgments Act 1922, Chapter 175, Laws of the Federation and Lagos 1958 (the 1958 Act). Section 3, Part 1 of the 2004 Act (which contains provisions for the registration of foreign judgments) provides that where the Minister of Justice of the Federation of Nigeria is satisfied that in the event of the benefits conferred by Part 1 of the 2004 Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured with regard to the enforcement in that foreign country of judgments made by a superior court in Nigeria. The Minister may, by order, direct the extension of Part 1 to that foreign country. No such order has been made by the Minister of Justice to date. Section 10(a) of the 2004 Act allows the enforcement of foreign judgments from countries to which Part 1 of the 2004 Act has not been extended, provided that such applications for enforcement are made within 12 months of the foreign judgment or within such time frame as the court may permit.

Certain foreign judgments may also be enforced under the 1958 Act. This Act deals with the registration and enforcement of judgments obtained in Nigeria and the United Kingdom and other parts of Her Majesty's (Queen of the United Kingdom) dominion and territories, and was not repealed by the 2004 Act as decided by the Nigerian Supreme Court in the case of *Witts & Busch Ltd v Dale Power Systems plc*. The constitutional approach in entering into any bilateral or multilateral treaties is that until such an international treaty signed by Nigeria is enacted into law by the National Assembly, it has no force of law and its provisions will not be justiciable in the court of law within the country. This suggests that, before the enactment into law by the National Assembly of such a bilateral or multilateral treaty to which Nigeria is a signatory, the signed treaty has no force of law and Nigerian courts cannot give effect to it, as they can with other laws. This same process is applicable to every amendment made to any international treaty to which Nigeria is a signatory or party.

2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

Nigeria operates a federal system of government comprising 36 states and a central federal government. Although each state has a legislative assembly, the authority to make laws on issues regarding the enforcement of foreign judgments is constitutionally vested in the National Assembly, which is the federal legislative body, as such powers are contained in the exclusive legislative list of the Constitution. There are therefore no intra-state variations and there is uniformity in the law on the enforcement of foreign judgments.

3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

The primary sources of law are:

- the 1958 Act;
- the 2004 Act and the Rules of Court made pursuant to section 5 of the Act;
- the Sheriffs and Civil Processes Act, Chapter S6, Laws of the Federation of Nigeria, 2004;
- the various civil procedure rules of the superior courts before which registration and enforcement are sought; and
- the Judgment Enforcement Rules under section 94 of the Sheriffs and Civil Processes Act.

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Nigeria is not a signatory to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971. Its provisions, therefore, do not apply to the application for registration and enforcement of foreign judgments in Nigeria.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

A judgment creditor in respect of a judgment to which Part 1 of the 2004 Act applies may apply to a superior court in Nigeria to have the judgment registered at any time within six years of the date of the judgment, or where there have been proceedings by way of an appeal against the judgment, after the date of the last judgment given in those proceedings. An appeal is defined under the Act to include any proceeding by way of discharging or setting aside a judgment, an application for a new trial or a stay of execution.

Notably, where the Minister is yet to make an order extending the application of Part 1 of the Act to a country, the applicable time limit will be, as provided under section 10 of the Act, 12 months or longer, depending on what is allowed by a superior court of record in Nigeria.

For applications for enforcement made pursuant to the 1958 Act, such applications may be brought within 12 months of the date of the judgment or a longer period if allowed by the registering court. Therefore, where an application for registration of a foreign judgment is not brought within the statutory 12-month period, the application will be caught by limitation, except when time is extended for the judgment creditor by the court. This position was affirmed by the Supreme Court in *Marine & Gen Ass Co Plc v OU Ins Ltd* (2006) 4 NWLR (Part 971) 622.

There are no circumstances stipulated by the Act under which an enforcing court would consider the statute of limitations of the foreign jurisdiction.

6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

The only order made by a foreign court that is enforceable in Nigeria pursuant to the 2004 Act is a final judgment that is conclusive between the parties thereto, under which some money is payable (excluding sums that are payable in respect of taxes or other charges of a like nature, such as fines or penalties).

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Yes. The 2004 Act requires registration of a foreign judgment to be sought before a superior court. A superior court is defined under the Act as the High Court of a State or of the Federal Capital Territory, Abuja, or the Federal High Court. After the foreign judgment is registered, it can then be enforced by the registering court. However, in exercising an abundance of caution, it is pertinent to seek registration of a foreign judgment in a court whose jurisdiction covers the subject matter of the original suit conducted outside Nigeria. In *Access Bank plc v Akingbola*, decided in 2014, the High Court of Lagos State ruled that the instant judgment of the High Court in England could not be registered and enforced in the Lagos State High Court. The Court based this decision on the ground that the subject matter of the suit that led to the judgment was a matter within the exclusive jurisdiction of the Federal High Court under section 251(1)(e) of the Constitution of Federal Republic of Nigeria 1999 as a matter under the Companies and Allied Matters Act, and if the original action had been tried in Nigeria, the right court siesed with jurisdiction would be the Federal High Court. The Court therefore concluded that the application to register should have been sought at the Federal High Court and quashed the registration of the judgment which was earlier granted in respect of the judgment. In *Kabo Air Limited v the O' Corporation Limited* (2014) LPELR-23616 (CA), the Court of Appeal also alluded to the fact that the subject matter of the judgment sought to be registered was in relation to aviation, which is within the exclusive jurisdiction of the Federal High Court, in holding that the Federal High Court had jurisdiction to entertain the application for registration of a judgment that was obtained in the Gambia.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

The process of recognition involves a court hearing by a judge who must first consider an application for the registration of the foreign judgment. Should the application be granted, the judgment will be registered in the Register of Judgments. Once the judgment has been registered and is not set aside on appeal, it can then be enforced by the judgment creditor. Enforcement, on the other hand, may or may not involve a court hearing. Upon recognition or registration of a foreign judgment, the judgment creditor may seek to enforce the foreign judgment (which is now deemed to be the judgment of the court that registered it) by the various means of execution provided under the Sheriffs and Civil Processes Act. These include execution by issuance of a writ of attachment that empowers court bailiffs to seize property of the judgment debtor, and execution through garnishee proceedings, which involve a court hearing by which moneys due to the judgment debtor from third parties are attached in satisfaction of the judgment debt. Where property is to be attached, the judgment creditor must obtain a writ of execution or fieri facias from the relevant court. The process of obtaining a writ of execution is mostly administrative and very rarely involves a court hearing, except in certain situations stipulated under the rules of the various courts, where the leave of the court be sought before a writ of execution can be issued.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

A defendant cannot raise merits-based defences to liability or defences as to the scope of the award. The grounds for setting aside the registration of a foreign judgment are clearly stipulated under the 2004 Act and are limited to issues such as fraud, public policy, jurisdiction, lack of service or lack of sufficient time after service to respond to the action in the foreign court prior to the entry of the judgment. The courts in Nigeria have held that a registering court has no appellate jurisdiction over the foreign court and cannot therefore embark upon a merits-based assessment of the foreign judgment sought to be registered.

10 Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

There is no provision in the 2004 Act for a party to obtain injunctive relief seeking to prevent the enforcement of foreign judgment proceedings in Nigeria. In *Kalu v FGN* (2014) 1 NWLR Part 1389, page 479, the Appeal Court held that injunctive relief, being in personam, is directed against the litigant and not the court or its proceedings. The available remedy for a defendant, akin to a mandatory injunction, is to bring an application to set aside the registration of a foreign judgment. However, this can only be entertained if the foreign judgment was registered in contravention of the 2004 Act, if the original court that gave it lacked jurisdiction, if it was obtained by fraud or if the rights under it are not vested in the person that made the application for registration. Similarly, the registering court can set aside a judgment if the judgment debtor did not receive notice of the proceedings in the original court that gave it and thereby did not appear, making the said judgment a default judgment.

11 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

The mandatory requirements for registration or recognition of a foreign judgment are as follows:

- the 2004 Act must be applicable to such judgment and the judgment must be a final judgment;
- the judgment debtor, as defendant in the original action, must have received notice of the proceedings (beside service of the processes) in sufficient time to enable it to defend the proceedings;
- the foreign court must have jurisdiction in the circumstances of the case and the foreign judgment must be enforceable by execution in the country of the original court;
- the judgment must have been obtained without any form of fraud;
- the foreign judgment must conform to public policy in Nigeria;
- the judgment creditor must be the applicant for registration of the judgment;
- the judgment must not have been wholly satisfied; and
- the judgment must be one under which some money is payable, not being sums that are payable in respect of taxes or other charges of a like nature, or fines or penalties.

12 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?

No non-mandatory factors that are outside the provisions of the 2004 Act may be considered in an application for registration of a foreign judgment.

13 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

There is no requirement under the 2004 Act that the judicial proceedings in the foreign court correspond to due process in Nigeria.

14 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

The Nigerian courts do examine whether the foreign court had personal jurisdiction over a defendant. One of the grounds under the 2004 Act for setting aside the registration of a foreign judgment is whether the original court had no jurisdiction in the circumstances of the case. The Act further defines for this purpose when the original court shall be deemed to have jurisdiction and when the original court shall be deemed not to have jurisdiction for judgments in an action in personam or in an action in rem. For an action in personam, the original court shall be deemed not to have jurisdiction if the judgment debtor, being a defendant in the original proceedings, was a person that under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court. With specific regard to enforcement under the Act, the foreign court is deemed to have jurisdiction and the foreign judgment is registrable and enforceable in Nigeria only if the judgment debtor voluntarily appeared or otherwise agreed to submit to the jurisdiction of the relevant foreign court, or the judgment debtor was resident in the jurisdiction of the relevant foreign court at the time when the proceedings were instituted.

15 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

The 2004 Act does not specifically direct the enforcing court to examine whether the original court had subject-matter jurisdiction over the controversy, but by inference this is implied. In considering the mandatory conditions for registration, such as the foreign court's jurisdiction in the circumstances of the case, the enforceability by execution of the foreign judgment and whether the foreign judgment was obtained by fraud or not, the registering court may have to visit the subject-matter jurisdiction of the original court.

This is also contingent on whether the foreign judgment is in rem or in personam. Section 6(2)(b) of the Act deals with judgment in rem of which the subject matter is movable property. The registering court will have to consider before registration of the judgment whether the property (subject matter) was at the time of the proceedings before the original court situated in the country of that court. Section 6(2)(a) of the Act deals with judgment in personam. The registering court will have to consider the residence of the defendant in the original action – that is, whether the judgment debtor was resident in the country of the foreign court at the time of the proceedings, or (if the judgment debtor is a body corporate) whether its principal place of business was in the original country whether the business being the subject matter was to be performed or executed in the country of that court.

Finally, under the Act, the registering court will also consider subject-matter jurisdiction where there is controversy as to whether the proceedings of the original court ran contrary to an agreement by the parties to settle their dispute otherwise than by proceedings in the courts of the foreign country.

16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

The judgment debtor must have received actual notice of the proceedings of the original action in the foreign court within sufficient time to enable it to appear and defend the proceedings. Under section 6(1)(a)(iii) of the 2004 Act, one of the grounds for setting aside a registered foreign judgment is that, notwithstanding that the processes in the original court may have been duly served on the judgment debtor (which was the defendant in the original proceedings), it did not receive notice of those proceedings in sufficient time to enable it to defend the proceedings and did not appear.

There is no stipulation of the length of notice that will be considered as sufficient, but Nigerian courts will usually in such cases follow the common law rules of reasonable notice, which will be subject to the circumstances of each particular case.

17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

The relative inconvenience of the foreign judgment to the defendant is not one of the grounds for declining to register or enforce a foreign judgment under the 2004 Act. Where the parties by whatever agreement under which the dispute arose or by conduct voluntarily appeared or submitted to the foreign court's jurisdiction, the registering court will not consider the relative inconvenience to the judgment debtor in the registration or setting aside proceedings.

18 Vitiation by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

One of the grounds for denying the registration of a foreign judgment under the 2004 Act is that the judgment was obtained by fraud. The courts, therefore, ordinarily examine the foreign judgment for any allegation of fraud.

19 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

One of the grounds for denying the registration of a foreign judgment is that enforcement of the judgment would be contrary to public policy in Nigeria. There is no specific requirement that the foreign judgment be consistent with substantive laws in Nigeria.

20 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

The registering court may set aside the registration of a foreign judgment if it is satisfied that the matter in dispute in the proceedings in the original court had, prior to the date of the judgment, been the subject of a final and conclusive judgment of another court having jurisdiction over the matter in the original foreign country. The 2004 Act does not specify whether the judgment obtained in the original proceedings must have been between the same parties or their privies, but the common rule applied by Nigerian courts in such cases is that a previous judgment is only binding between the same parties and on the same issue.

The language of the 2004 Act suggests that where there are conflicting judgments, a subsequent or latter judgment will not be registered and enforced. Although there is no case law on the point in Nigeria in the event of conflicting judgments between the parties on the same issue, it appears from the language of the statute that the judgment that came first is the that which will be registered and enforced.

21 Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

A judgment is a final decision of the court on a particular subject matter and is binding only on the parties to the action and parties affected by the judgment. The court cannot apply principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor which was the defendant in the proceedings that led to the judgment. The alter ego is a distinct person; hence, no judgment delivered against a specific person can be enforced on the alter ego. The principle of agency is equally not applicable and a foreign judgment cannot be enforced against a third-party agent that was not named as the judgment debtor in the foreign judgment.

22 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

Section 6(3)(b) of the 2004 Act provides that, if the bringing of proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled other than by proceedings in that court, the court in Nigeria will hold that the foreign court lacked jurisdiction and will refuse to register the foreign judgment; and if registration had been procured by the judgment creditor ex parte, such registration may be set aside by the registering court.

23 Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

No more deference is accorded to a judgment of any one foreign jurisdiction over others. However, only judgments of the courts of the United Kingdom, the Republic of Ireland, and courts of other parts of Her Majesty's dominions and territories, are registrable and enforceable under the 1958 Act. Under section 3 of the 2004 Act, the Minister of Justice may extend Part 1 of the Act, which permits registration and enforcement of foreign judgments within six years of the date of such judgment, to any country that accords reciprocal treatment to judgments of superior courts in Nigeria. The Minister of Justice has not extended the said part to any country to date. Section 9 of the 2004 Act applies Part 1 of the Act to judgments of courts of all Commonwealth countries. Accordingly, in respect of judgments of such Commonwealth countries, an application for registration may be made within six years of the date of such judgment. Aside from the foregoing, which relates to the applicability of Part 1 of the 2004 Act to certain countries, no special or greater deference is accorded to the judgments of the courts of any one country.

24 Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

Where a foreign judgment is in various parts or on different matters, the registering court can register part of the judgment. Under section 4(4) of the 2004 Act, where part of the judgment has been satisfied and part unsatisfied, the court can register the part that is unsatisfied. Additionally, section 4(5) of the Act provides that where part of a judgment can be properly registered, the judgment may be registered in respect of that part alone.

There is no provision under the Act for alteration or reduction of damages awards made in a foreign judgment. This would amount to exercising supervisory or appellate control over the foreign court, which is not permitted under Nigerian law.

25 Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

Section 4(3) of the 2004 Act provides that where the sum payable under a judgment that is to be registered is expressed in a currency other than the currency of Nigeria, such judgment shall be registered as if it were a judgment for such sum in the currency of Nigeria, based on the rate of exchange prevailing at the date of the judgment of the original court equivalent to the sum awarded. The registering court will, in addition to the original judgment sum, award interest and reasonable costs of and incidental to registration, including the costs of obtaining a certified true copy of the judgment from the original court. This is, however, applicable only to judgments of countries in respect of which the Minister of Justice has extended Part 1 of the 2004 Act. For judgments registered pursuant to section 10(a) of the 2004 Act or pursuant to the 1958 Act, the foreign judgment may be registered and enforced in foreign currency.

26 Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

A party may appeal to a higher court, in this case the Court of Appeal, against a decision recognising and enforcing a foreign judgment. The appeal process is distinct from the process of recognising and enforcing the foreign judgment that is made at the High Court before which the judgment is first sought to be recognised and enforced. Where the High Court has made a final order recognising the award, the judgment debtor may thereafter appeal to the Court of Appeal seeking to set aside the order of the High Court.

Where a foreign judgment has been registered and an appeal is pending, the Court of Appeal in *Purification Tech v A-G Lagos State* (2004) 9 NWLR Part 879, page 665 held that the existence of an order of stay of execution of a judgment does not preclude a judgment creditor from seeking to use garnishee proceedings to enforce the judgment. This suggests, therefore, that the judgment creditor may apply for a garnishee order attaching sums of money due to the judgment debtor from third parties, which in Nigeria are mostly commercial banks, in the face of a pending appeal and application for stay of execution. The judgment creditor may also apply for a post-judgment *Mareva* order of injunction that freezes the judgment debtor's accounts pending the hearing and determination of the appeal. This effectively freezes the bank accounts of the judgment debtor and restrains it from moving its assets outside the jurisdiction or dissipating them below the adjudged sum within the jurisdiction.

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27 Enforcement process**Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?**

Once registered, the foreign judgment shall, for the purpose of execution, be of the same force and effect as a judgment of a superior court of record in Nigeria. Proceedings may be taken on the registered judgment, the sum for which the judgment is registered shall carry interest and the registering court shall have the same control over the execution of a registered judgment as if the judgment had been originally given in the registering court and entered on the date of registration.

After registration, all the processes by which a judgment of a superior court may be enforced in Nigeria are available to enforce the foreign judgment. They include, but are not limited to, writs of attachment of real and personal property (movable and immovable), garnishee proceedings and committal of the judgment debtor to prison where he or she is unable to pay the debt after other means of enforcement have failed. A judgment creditor may also apply to the court for the issuance of judgment summons and writ of sequestration in order to enforce the registered judgment.

28 Pitfalls**What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?**

The most common pitfall is where a defendant ignores a foreign court process that eventually results in a judgment that is sought to be enforced under the provisions of the 1958 Act. The case of *Grosvenor Casinos v Halaoui* (2009) 10 NWLR, Part 1149, page 309 is authority for the principle that a foreign judgment entered against a defendant resident in Nigeria that does not willingly appear in the foreign court or otherwise submit to its jurisdiction is not registrable in Nigeria under the 1958 Act. In such cases, it is better to proceed under section 9 or 10 of the 2004 Act. Although Part 1 of the 2004 Act provides a limitation period of six years, because that part has not been extended to any country by the Minister of Justice, the limitation period for applying for registration of foreign judgments (except judgments to which section 9 of the 2004 Act applies) is 12 months from the date of such judgment. Frequently, applications for registration of foreign judgments are made outside the limitation period of 12 months without an application for an extension of time to the registering court. This usually results in such applications being defeated on a technical basis. Furthermore, applications for registration of foreign judgments are sometimes stalled or slowed down by appeals that may continue for years and eventually reach the Supreme Court of Nigeria, resulting in significant delays.

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