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Enforcing Foreign Judgments in Nigeria: Any Role for the National Industrial Court?

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ENFORCINGFOREIGNJUDGMENTSINNIGERIAANYROLEFORTHENATIONALINDUSTRIALCOURT?

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Enforcing Foreign Judgments in Nigeria: Any Role for the National Industrial Court? *

Honourable Justice Oluwakayode Ojo Arowosegbe

Abstract- The *Third Alteration Act* altered the *Constitution* to make the *National Industrial Court* [*NIC*] a superior Court. In spite of this, jurists have continued to deny the *NIC*, the right to enforce foreign judgments on labour matters. The arguments are that: because, the *NIC* is not listed in S. 2(1) of the *Foreign Judgments [Reciprocal Enforcement] Act* [*FJA*], it lacks jurisdiction in this regard and that; enforcement of foreign judgments does not involve exercise of jurisdiction, but mere exercise of power. Consequently, the *NIC* has handed down a decision divesting itself of jurisdiction! However, the research finds that, the arguments are fallacious and that, the *NIC* has exclusive jurisdiction to enforce foreign labour judgments in Nigeria. The research opines that, the gestating controversy must be nipped in the bud for the nation to reap the benefits of the bounties of the globalized labour market. It recommends deletion of the problematic part of S. 2(1) of the *FJA*, the overhaul and, merging of the two cognate statutes, to bring up the Nigerian law in tune with international best practices. The research, being doctrinal, relies on cognate statutes, case laws and journal articles.

I. Introduction

a) Research Problem

The importance of enforcement of foreign judgments in the municipal courts cannot be overemphasized in this age of globalization, which has led to phenomenal increase in the mobility of labour and commerce[1]. Any developing nation that desires economic breakthrough in this modern world of globalized labour force must simplify its law on enforcement of foreign judgments. If enforcement of foreign judgments in the local courts was a rarity in time past, it has now assumed prominence in this modern time, where advancements in communication and transport technologies have transformed mobility of labour and commerce, making labour, a fluid and trans-national commodity, by its newfound mobility. These in turn have engendered phenomenal increase in applications for municipal enforcement of foreign judgments, making them the new normal in labour relations. With workers and employers crisscrossing the world as a close-knit global village, the need has never been more felt.

Unfortunately, at this critical stage of the nation's development, when foreign investments and industrial revolution are seriously desired, meaning increased globalized labour relations, with the consequential increase in the need for municipal enforcement of foreign judgments, the national law is bedeviled with many bottlenecks, one of which is the uncertainties regarding the municipal court with the requisite jurisdiction to enforce foreign judgments on labour relations. Therefore, the need arises for this research. Evidently, the research does not cover recognition and enforcement of international arbitral awards, governed by international convention[2].

b) Background, Literature Review, Research Objectives and Methodology

The anchor for the research problem is the omission of the *National Industrial Court* [***NIC***] in S. 2(1) of *Foreign Judgments (Reciprocal Enforcement) Act* [***FJA***]. Such is the reconditeness of the mischief created by this omission that, the *NIC* itself decided in *Richard Saxton & Ors v. Opi International Nigeria Limited*[3] [***Saxton's case***] that, it lacked jurisdiction to enforce foreign judgments on labour causes!

The incentive for this paper is the debate generated amongst the judges of this *Court,* who are members of the *Rules, Practice Direction and Digitalisation Committee* [***Rules Committee***], currently reviewing the *National Industrial Court of Nigeria [Civil Procedure] Rules, 2017* [***NIC Rules***] on the proposal for rules for enforcement of foreign judgments. This further marked out the recondite nature of the problem. The debate was centred on two prongs: the non-listing of the *NIC* in S. 2(1) of the *FJA*, which confers the power to enforce foreign judgments on Nigerian courts and, the reasoning that, foreign judgment enforcement does not involve the exercise of jurisdiction, but merely the

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[1] The views expressed are entirely my personal views, except otherwise stated.
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"*Labour mobility and globalization – UNECE*" at www.unece.org posted 16/02/2017 [accessed19/12/2020]; Dani Rodrik, "*Globalisation: New Deal On Labour Mobility*" at www.socialeurope.eu published 26/04/2018 [accessed 19/12/2020]; Rakkee Thimothy, "*Labour mobility in globalisation era*" at www.thehindu.com posted 21/08/2012 [accessed 19/12/2020]; Ray Tomasco, "*Labor Mobility and Globalization: The World Is Now Your Workplace*" reesmarxGlobal – Global Recruitment x Business Expansion, posted 29/10/2017 at www.reesmax.com [accessed 19/12/2020].

[2] *Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958* at www.uncitral.un.org [accessed 21/09/2022].
[3] Unreported Suit No. NICN/LA/305/2019 [delivered by Lagos Division, November 21, 2019].

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exercise of power, as the municipal courts did not give the judgments in the first place. These arguments seemed alluring. When this debate came up at the *Rules Committee*, the author held the view that; the *NIC* was vested with the exclusive jurisdiction to enforce foreign judgments on labour relations. Because of the irreconcilable views, the author felt the need to thoroughly re-examine the issue alongside the decision of the *NIC* in *Saxon's case* [supra] and, and for this reason, did further rigorous research[4], in order to settle the issue, once and for all. In all the research sources consulted, most did not touch on the issue of the competent courts to enforce foreign judgments, as this was assumed settled, and the few that did, there appeared to be collective amnesia of the existence of the *NIC* as a superior court within the legal regime of the law and practice of foreign judgments enforcement in Nigeria, even though, they were all published post-2011[5], after the *Third Alteration Act*[6] had made the *NIC* a superior court, with exclusive civil jurisdiction on labour matters.

There is thus, a vacuum in this area of the law, which this research intends to interrogate. With the scanty case-law authorities and the divergent opinions of the *NIC's* eminent jurists, coupled with the collective amnesia of legal writers on *NIC's* place in this, it is clear, the issue is recondite and; therefore, needs good clarification. It is also the conviction of the research that, this area of the law needs detailed and lucid clarification to obviate the resultant difficulties that would arise, if the issue of the competent court to enforce foreign judgments on labour matters is not cleared at the outset, and snowballs into the usual jurisdictional objections that often take laborious time to determine in Nigeria, at the detriment of the substantive applications for enforcement of foreign judgments, with spiral negative effects on the Nigerian labour market and the economy. The research also posits that, unwittingly denying the *NIC* jurisdiction in this area of the law would shut out litigants from the benefits of the innovations brought about by the *Third Alteration Act*.

It is the finding of the research that, since the modes of enforcing foreign judgments in Nigeria are two, definitely, the common law mode, which is activated by filing a new action in the municipal courts to rehear the obligations arising from the foreign judgments, would lose the full benefits of the worker-friendly innovations of the *Third Alteration Act*, if the *NIC* is denied jurisdiction to enforce foreign judgments on labour causes. With regard to the statutory mode, it is not impossible, though, enforcement under this mode is not a rehearing, to apply some of the innovations of the *Third Alteration Act*, over which the *NIC* alone has exclusive jurisdiction, during the course of deciding applications for enforcement of foreign judgments. It is also felt that, if this issue is clarified at the earliest, it augurs well for stakeholders in the labour market to know well in advance, without much ado and waste of time, the proper court to approach for foreign judgment enforcement in Nigeria, in view of the labour adage that, time is of essence in labour issues. Denying *NIC* jurisdiction entails unwittingly sidetracking the advantages of the innovations in the *Third Alteration Act*. While it is the law that, a court must not be hungry for jurisdiction, it is the law too, that, nothing shall be taken out of the jurisdiction of a superior court, except that, which is expressly excluded in the enabling statute[7]. In determining the extent of jurisdictions of the superior courts in Nigeria, the *Constitution* is the first port of call, being the source of their jurisdictions.

Apropos of the foregoing, the scope of the research covers restatement of the law on enforcement of foreign judgments in Nigeria, in the lights of the constitutionally enhanced status of the *NIC*, the globalized labour markets and international best practices. As the research is doctrinal, it relies on both primary and secondary materials. The primary sources are the: *FJA*, *Reciprocal Enforcement of Judgments Act* [***REJA***], *Constitution of the Federal Republic of Nigeria 1999* [***Constitution***] and, the *National Industrial Court Act* [***NICA***]. The secondary sources are: the *Sheriffs and Civil Process Act* [***SCPA***], the *Interpretation Act*, relevant case laws and, the Internet. With the research methodologies settled, the stage is set for the major task.

[4] Emmanuel Ekpenyong, "*Nigeria: Procedure For Recognition And Enforcement Of Foreign Judgments In Nigeria*" at www.mondag.com uploaded 23/04/2018 [accessed 21/12/2020]; Adeniyi Shoda and Abolanle Davies, "*Nigeria: Enforcement of Foreign Judgments Laws and Regulations 2020*" at www.iclg.com published 08/04/2020 [accessed 21/12/2020]; Udo Udoma & Belo-Osagie, "*Enforcement of Foreign Judgments Under Nigerian Law*" at www.uubo.org [accessed 21/12/2020]; ALEX Legal Practitioners & Associates "*Litigation: Enforcement of foreign judgments in Nigeria*" published 25/01/2019 at www.lexology.com [accessed 21/12/2020]; SPA Ajibade & Co., "*Enforcement of Foreign Judgments 2016*", at www.spaajibade.com [accessed 21/12/2020]; Abimbola Akeredolu and Chinedum Umeche of Banwo & Ighodalo, "*Enforcement of Foreign Judgments 2017*" 2nd Edition at www.banwo-ighodalo.com [accessed 21/12/2020]; Etigwe Uwa *SAN*, Adeyinka Aderemi and Chinasa Unaegbunam, "*Enforcement of Foreign Judgments – in 29 jurisdictions worldwide 2014*" at www.sskohn.com [accessed 21/12/2020]; Chukwuma Okoli and Anthony Kennedy, "*The Recognition and Enforcement of Foreign Judgments at Common Law in Nigeria*" at www.conflctoflaws.net published 05/12/2020 [accessed 21/12/2020].

[5] Ibid.

[6] It came into effect March 3, 2011.

[7] *Union Capital Markets Limited v. BJ Export Limited & Anor* (2018) LPELR-43156 (CA) 23-38, A-E.

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II. The Law on Municipal Enforcement of Foreign Judgments

a) General Statement of the Law, Practice and Procedure

There are two ways by which foreign judgments could be enforced in Nigeria: statutory[8] and *Common Law*[9] channels. There are two statutes: the *FJA* and *REJA*. And there are conditions that must be met before applications under both *FJA* and *REJA* could be entertained[10]. Both statutes have complementary applications[11]. Conditions precedent and presence of jurisdiction are focal to the exercise of a court's power on any matter before it[12]. The implication of not meeting any of the relevant conditions precedent is that, even though, the municipal court has the substantive jurisdiction, it would not be able to exercise any of its powers to enforce the foreign judgment. Thus, the relevance of jurisdiction must be determined at the outset because; it could neither be waived nor acquiesced by the parties[13].

b) Whether the NIC has the Jurisdiction to Enforce Foreign Judgments?

It needs be stated at the outset that, when it comes to the issue of enforcement of foreign judgments via the common law medium, it is settled that, the *NIC* would be the exclusive municipal forum for enforcement of foreign judgments obtained on labour matters, being that, this involves filing a new suit and, not enforcement simpliciter and thus, involves the direct invocation of the civil jurisdiction of the *NIC*, as the municipal *Court* with exclusive civil jurisdiction over labour matters, since fresh suits must be filed to re-litigate the obligations arising from such foreign judgments[14]. Such fresh suits could legally and logically not be filed in a court that lacks substantive jurisdiction on the subject matter. And issue of enforcement of foreign judgment by way of bringing a fresh suit, is not governed by or subject to the *FJA* and the *REJA*, but only to the principles appertaining to it under the common law. Though, it is observed that, the literatures seemed to have narrowed the issue of the competent courts to the: *Federal High Court [FHC], Federal Capital Territory High Court [FCTHC], and State High Court [SHC]*[15]. If they had adverted to the common law mode of enforcement of foreign judgments and, the enhanced status of the *NIC* as a superior court, with exclusive civil jurisdiction on labour matters, it would not have been difficult to know that, *NIC* would have original jurisdiction on enforcement of foreign judgments on labour maters, brought as fresh suits, by virtue of its exclusive civil jurisdiction pursuant to S. 254C-(1) of the *Constitution*.

The principles, as could be decoded from the practice and procedure of enforcement of foreign judgments, via the common law mode, are actually what have been codified into the *FJA* and *REJA*, for easy application, with just minor innovations dispensing with the need to file fresh suit. If jurisdiction on substantive subject matter is so central to common law mode of enforcement of foreign judgments, it axiomatically follows that; it is only the municipal courts with the requisite jurisdiction that should logically also enforce foreign judgments under both *FJA* and *REJA*, but this fact seems lost because of the misconception that, statutory enforcement of foreign judgments does not involve invocation of jurisdiction, but merely exercise of powers. So, the area of serious abstruseness is with regards to enforcements under the *FJA* and the *REJA*, where, it seemed, there is clear and direct statutory provisions[16] excluding the *NIC* in that behalf.

We have noted that, two statutes principally cover the subject of enforcement of foreign judgments in Nigeria. The major statute is the *FJA*, which impliedly validates the *REJA* and, sets the conditions for its continued validity[17]. S. 2(1) of the *FJA* lists the superior courts in Nigeria, which it says, are the only courts that can register and enforce foreign judgments. These courts are: *FHC*, *FCTHC* and *SHC*. Before the *Third Alteration Act*, it would have been normal to dismiss with a wave of the hand that, the *NIC* had no *vires* to entertain applications to register and enforce foreign judgments, not being a superior court then[18], but with the ascendancy of the *Third Alteration Act* in 2011, this view needs to be re-examined to put the law straight. The relevant provisions of the *Constitution* [as altered] along with those of the other relevant statutes must now be thoroughly examined to determine whether the *NIC* now has the jurisdiction, to register and enforce foreign judgments. S. 2(1) of the *FJA* obviously excludes the *NIC* from the list of superior courts in Nigeria. Ordinarily, the express mention of one thing is the exclusion of that, which is not mentioned[19]. But there are several rules of interpretation and, a court applies the one relevant to the

[8] *Witt & Busch Ltd v. Dale Power Systems Plc* (2007) LPELR-3499 (SC) 26-29, C-A.
[9] *Mudasiru & Ors v. Onyearu & Ors* (2013) LPELR-20354 (CA) 24, E.
[10] SS. 3(1)-(2), 3(4), 4, 6(2)(a)(i),(iii)&(iv) & 9(1) *FJA* and 3(1)&(2) & 5 *REJA*, See also Udoma & Belo-Osagie [supra] and *Marine & General Insurance Company Plc v. Overseas Union Insurance* (2006) LPELR-1840 (SC) 17-19, D-B.
[11] Witt & Busch Ltd v. Dale Power Systems Plc op sit 9-13, D-A.
[12] *Madukolu & Ors v. Nkemdilim* (1962) LPELR-24023 (SC) 9-10, F-D.
[13] *Osi v. ACP & Ors* (2016) LPELR-41388 (SC) 15-16, E.
[14] *Willbros West Africa & Ors v. Mcdonnel Contract Mining Ltd* (2005) LPELR-24808 (CA) 42-43, F-D; and Ekpenyong [supra] para. b.
[15] S. 2(1) *FJA*.
[16] S. 2(1) *FJA*.
[17] S. 9(2) *FJA*; Udoma & Belo-Osagie [supra] para. 1.0 and *Macaulay v. Raiffeisen Zentral Bank Osterreich Akiengsell Schaft (RZB) of Austria* (1999) LPELR-13079 (CA) 7-9, D-E.
[18] *N.U.E.E. & Anor v. B.P.E.* (2010) LPELR-1966 (SC) 40-42, F-D.
[19] *Mazelli v. Mazelli* (2012) LPELR-19945 (CA) 19, F.

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facts of a case[20]. The provisions of S. 2(1) of the *FJA* are the anchor on which the absence of power in *NIC* to enforce relevant foreign judgment is based.

The golden rule is that, a statute must not be construed in a way that would produce absurdity[21]. To interpret the provisions of S. 2(1) of the *FJA* to deny the *NIC* the jurisdiction to register and enforce relevant foreign judgments because, *NIC* is not listed in the *FJA*, which was enacted long before the enactment of the *Third Alteration* Act, would produce the absurdity that, the *NIC's* subsequent constitutionally conferred status of superior court, is denied it, by its mere omission in the *FJA*, an ordinary statute, contrary to the decision of the *Supreme Court* in *N.U.E.E. v. B.P.E*[22]. [supra] that, the status of a superior court is iron-cast and, cannot be tampered with by an ordinary statute. This could not have been the intendment of the *FJA* for, it did not anticipate the *Third Alteration Act* and; thus, only listed the superior courts in existence at the time it was amended in 1990. And in interpreting the provisions of statutes, hierarchies of the laws must be borne in mind. The *Constitution* is the grundnorm and takes preeminence over all other municipal laws[23].

The above position has received imprimatur in *Saraki v. FRN*[24], wherein the *Supreme Court* opined: "The time honoured principle of law is that wherever and whenever the Constitution speaks any provision of an Act/Statute, must remain silent…" Therefore, all laws and statutes must bow to the voice of the *Constitution* on this issue. The *Constitution* [as altered] has spoken, by listing the superior courts in Nigeria, stating emphatically that, the list is exhaustive[25]. And incidentally, this list now includes the *NIC*[26]. Therefore, S. 2(1) of the *FJA*, which lists the superior courts in Nigeria, and omits the *NIC*, is void to the extent of the omission[27]. This view is reinforced by two other rules of interpretation. The first is the *doctrine of covering the field*, which postulates that, when the *Constitution* makes exhaustive provisions on anything, such that, it has sufficiently covered the field, provisions contained in any other statute on the subject matter, are void or go into abeyance[28]. The second is the principle of law, which is really superfluous, when the *Constitution* is concerned, because of the doctrine of constitutional supremacy. This is that, when two statutes, both expressed in affirmative languages, are contrary on a matter, the later abrogates the former[29]. This is otherwise called the doctrine of implied repeal[30].

The *Third Alteration Act* that altered the *Constitution* to make the *NIC* a superior court is later, and both SS. 2 of the *FJA* and 6(3)&(5) of the *Constitution* [as altered] are affirmative; but contrary on the matter of *NIC* being a superior court. S. 6(3) & (5)(cc) of the *Constitution* [as altered], which is later in time, and listed the *NIC* amongst the superior courts in Nigeria, must prevail, were it an ordinary Act of the *National Assembly* [***NASS***]. And being a constitution amending *Act*, it abrogates S. 2(1) of the *FJA* for its inconsistency, in trying to whittle down the field entirely covered by S. 6(3)&(5) of the *Constitution*. S. 2(1) of the *FJA* is therefore void and of no effect for its inconsistency with constitutional provisions. The listing of the superior courts in S. 6(5) of the *Constitution* [as altered] is exhaustive of the number of superior courts existing in Nigeria, by S. 6(3) of the *Constitution*. Therefore, the *Constitution* has exhaustively covered the field, such that, the provisions of S. 2(1) of the *FJA*, even if not contrary to the *Constitution* is inoperative by reason of the duplication[31]. Since the listing in S. 2(1) of the *FJA* is inoperative, recourse must be had to the *Constitution* and, the *NIC* therefore, has the exclusive jurisdiction to enforce foreign judgments on labour matters.

However, as indicated earlier, the *NIC* itself, has, with the greatest respect, inadvertently handed down a decision[32], holding emphatically, it lacked jurisdiction to entertain applications to enforce foreign judgments on labour matters. The anchors of this decision, as earlier indicated, are S. 2(1) of the *FJA,* the *NICA* and, the legal implication of the distinction between jurisdiction and powers of a court, amongst others. The research also observed that, *Shoda* and *Davies*, in their incisive article [*supra*], correctly identified how to approach the interpretation of S. 2(1) of the *FJA*. They opined that, it is by virtue of S. 251 of the *Constitution* that, the *FHC* had exclusive jurisdiction on recognition and enforcement of foreign judgments on admiralty, but, regrettably lapsed into the same error of not recognizing the place of the *NIC* in the enforcement of relevant foreign judgments, by virtue of SS. 6(3)&(5(cc) and 254C-(1) of the same *Constitution* [as altered]. This takes us to a critical review of the decision of the *NIC* in *Saxton's case* [supra] and the opinion of *Shoda* and *Davies* in their article, with a view to charting a sure way for the jurisdiction of the *NIC* on matters of registration and enforcement of foreign judgments on labour matters. *Saxton's case*, being a precedent from

[20] *Adewumi & Anor v. The AG Ekiti State & Ors* (2002) LPELR-3160 (SC) 32, B-D.
[21] *Nyesom v. Peterside & Ors* (2016) LPELR-40036 (SC) 65-66, D-B.
[22] (2010) LPELR-1966 (SC) 40-42, F-D.
[23] S.1(1)&(3) of the *Constitution*.
[24] (2016) LPELR-40013 (SC) 93, D-E.
[25] S. 6(3)&(5) of the *Constitution*.
[26] S. 6(3)&(5)(cc) *1999 Constitution*.
[27] *Adisa v. Oyinwola & Ors* (2000) LPELR-186 (SC) 74-75, F-C.
[28] *INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72 at 204-205, G and, J.O. Akande, *Introduction to the Constitution of the Federal Republic of Nigeria, 1999*, MIJ Professional Publishers Ltd., Lagos, Nigeria, 2000, 478-481.
[29] *FRN v. Osahan & Ors* (2006) 5 NWLR (Pt. 973) 361 at 447.
[30] Akintokun v. LPDC (2014) LPELR-22941 (SC) 64-66, F-B.
[31] *INEC v. Musa* and Akande op cit.
[32] *Saxton's case* [supra].

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the *NIC* itself, needs thorough re-examination, to justify departure from it.

But before then, it is necessary to settle the argument that, enforcement of foreign judgments does not involve invocation of jurisdiction, but mere exercise of powers because, the municipal courts in which the judgments are to be enforced never adjudicated on the foreign judgment: that is, it never delivered the judgment, and in virtue of that, S. 2(1) of the *FJA* could validly exclude the *NIC*. The resolution of this morass has direct effects on the subsequent discussions. This argument seems very plausible and would have been valid but for the fact that, it lost cognisance of the very salient fact that, application for registration of foreign judgment is brought to the Court and not the registrar. The Court would sit, hear evidence, listen to arguments of lawyer(s) and, thereafter, exercise its discretion one way or the other, after examining the facts. And its decision is subject to appeal to the *Court of Appeal* and, not by filing fresh suit. These are purely judicial functions. The provisions of SS. 3&4 of the *FJA* burden courts, and not executive or administrative bodies, with the duties to register and enforce foreign judgments. Yes, what they cover is power and not jurisdiction. But, a court cannot exercise any power without having jurisdiction[33]. It is therefore erroneous to argue that, enforcement of foreign judgments does not involve the invocation of jurisdiction, but purely exercise of powers. Be that as it may, we move to the point before the detour.

c) Critical Reviews of Saxon's Case and Shoda & Davies' Article

The kernel of the decision of the *NIC* in *Saxon's case* [supra] is contained at p. 5-6:

> "The subject matter of this application is Foreign Judgments enforcement. The question is: has the National Industrial Court Act 2006, and the 1999 Constitution (Third Alteration Act 2010) conferred the National Industrial Court with jurisdiction to enforce Foreign Judgments? The answer is No… By section 2 of the Foreign Judgments (Reciprocal Enforcement) Act, 'superior court in Nigeria' means the High Court of a State or of the Federal Territory Abuja, or the Federal High Court…The Act has expressly mentioned the Courts that can register and enforce Foreign Judgments. The National Industrial Court is not so mentioned… 'Jurisdiction is not to be equated with power…for all the reasons stated above, the orders sought by the applicants are refused. This suit is hereby struck out for want of jurisdiction."

With the utmost respect, there appears to be some confusion in the excerpt, arising from not fully appreciating the fine distinction between power and jurisdiction and the correlation between the two. Even the *Supreme NIC*, with utmost respect, has, in some occasion, fallen into this same error, which shows its tricky nature[34]. Jurisdiction is the right a court has to preside over cases, whereas, the powers of superior courts [inherent and statutory] are the specific things that courts can do and will do and, the manner of doing them in the course of exercising their substantive jurisdictions[35]. Jurisdiction and power are the two sides of the same coin. They are inseparable: where the snail goes, its shell follows. But, just as the snail leads its shell, jurisdiction leads power and not the other way round. Absence of the snail means its empty shell cannot move. It follows that; a court cannot and can never deploy any power without jurisdiction[36] and that, no statute can confer power on a court that lacks jurisdiction. At all material times, the superior courts assume the jurisdictions constitutionally conferred on them in deploying the powers granted in the *FJA* and *REJA* for the enforcement of foreign judgments. That seemed to be lost on the Court in the *Saxon's case*.

Therefore, no superior court in Nigeria could exercise any of the powers granted under the *FJA* and *REJA* without having constitutional substantive jurisdiction on the subject matter and persons[37]. Assumption of jurisdiction is therefore the assertion of the authority of courts to preside over cases for the purposes of exercising all the powers and procedures [inherent and statutory] that would lead to giving of decisions. Since the *Constitution* is the conferrer of jurisdictions on all the superior courts in Nigeria, what all other statutes do, is conferment of statutory powers, as distinct from inherent powers, which the *Constitution* made inherent in absolute terms, in all the superior courts. So, all that the *FJA* and the *REJA* did, was conferment of statutory powers to recognise and enforce foreign judgments on the superior courts in Nigeria. They did not confer substantive jurisdiction at all. Hence, it was, with the greatest respect, an error in *Saxon's* case, to equate mere statutory powers granted by the *FJA* and *REJA* with substantive jurisdiction and thereby declare that, because, the *NIC* was not listed in S. 2(1) of the *FJA*, it lacked substantive jurisdiction to recognise and enforce foreign judgments on labour matters.

[33] *Ajomale v. Yaduat & Anor* (1991) LPELR-305 (SC) 8-9, E-D.

[34] See *Osadebay v. AG, Bendel State* (1991) LPELR-2781 (SC) 29, C-D, in which *Supreme Court* exhibited this confusion by saying "If a court cannot exercise judicial powers, it cannot exercise jurisdiction…" The tail wagged the dog! Once a court has jurisdiction, it has both statutory and inherent powers by virtue of S. 6(3) & 6(6)(a) of the *Constitution*. Contrast the above authority with *Okwuosa v. Gomwalk & Ors* (2017) LPELR-41736 (SC) 8-9, A; *Ajomale v. Yaduat & Anor* op. cit. and, *Adigun v. AG Oyo State & Ors* (1987) LPELR-40648 (SC) 65-68, B-G, where the *Supreme Court* says: "There can be no doubt that a court which is endowed with a particular jurisdiction has powers which are necessary to enable it to act effectively within jurisdiction…" That is the correct statement of the law.

[35] Ibid.

[36] *Okwuosa v. Gomwalk & Ors* [supra].

[37] Ibid.

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The jurisdiction the superior courts originally had to enforce foreign judgments under common law was to rehear the case summarily, by taking a copy of the judgment as evidence against the judgment debtor and, by dint of reciprocity of jurisdiction and comity, enforce it. It is this same rehearing jurisdiction that has been altered by granting statutory powers that did away with rehearing and instead, converted the foreign judgments into municipal judgments of the registering superior courts and thereafter, enforced them. Implicit in bypassing rehearing, is that, the registering court has substantive jurisdiction, were the case to be reheard. It is observed too that, at the beginning of the quoted excerpt, reference was made to the *NICA*, with respect to the jurisdiction of the *NIC*. To begin with, it needs be stated that, it appears, with the greatest respect, a general misconception of law, with regard to the jurisdictions of the superior courts in Nigeria, to make reference to any other statute, than the *Constitution*. The jurisdiction of the *NIC*, ever since the enactment of the *Third Alteration Act*, is exhaustively conferred to the exclusion of any other statute by the *Constitution* itself, notwithstanding the introductory parts of S. 254C-(1) & (1)(L)(iii) of the *Constitution* [as altered] that, appear to suggest that, the *NASS* can give the *NIC* additional jurisdiction, aside those expressly conferred by S. 254C. The *Act* envisaged by the introductory part of S. 254C-(1) and S. 254C-(1)(L)(iii) is a constitutional amending Act, pursuant to S. 9 of the *Constitution* or, an ordinary Act conferring just additional powers, as distinct from jurisdiction, in line with section 254D-(2) of the *Constitution*. Anything outside these, by an ordinary Act of the *NASS*, is void *ab initio*[38]. The author had earlier, in another article, expounded somewhat similar view[39]:

> "No other statute, so far, appears to have added to the jurisdiction of the NICN; and where this is so, *such additional jurisdiction will be concurrent*, and if it deals with issues on which exclusive jurisdiction is already conferred on another superior court, it will be totally void; as ordinary Act of the National Assembly cannot amend the Constitution[40]."

In the light of more knowledge, the *NASS* cannot even confer the *NIC* with concurrent jurisdiction pursuant to an ordinary Act, by way of expansion of its jurisdiction on any new subject on which S. 254C of the *Constitution* has not already covered[41] because, to do so, would infringe the residual exclusive[42] jurisdiction of the *FCTHC* and the *SHC* or, the exclusive jurisdiction of the *FHC*, which could not be done by an ordinary Act of the *NASS*[43]. Be it noted that, there is no subject on earth that has not already been covered by the jurisdictions of the superior courts. To carve out any new subject for *NIC* would automatically conflict with the already vested jurisdiction of another superior court. So, for all intents and purposes, the provisions of S. 7 of the *NICA* are extinct as the *Dodo Bird*, except with respect to the appellate jurisdiction of the *NIC* and the original jurisdiction of the *Industrial Arbitration Panel* [***IAP***] directly conferred by S. 254C-(1)(L)(ii) of the *Constitution* and, the manner of exercising them, spelt out in SS. 7(4) of the *NICA* and 9-14 of the *Trade Disputes Act* [***TDA***]. By virtue of the doctrine of covering the field, it is even discourteous to the *Constitution* to continue to cite the provisions of S. 7 of the *NICA* on issues of jurisdiction of the *NIC*, in the presence of S. 254C of the *Constitution*, which has completely covered the field on the jurisdiction of the *NIC*.

There is absolutely nothing in S. 7 of the *NICA*, as it stands now, that is not completely covered by S. 254C of the *Constitution*. The rhetoric questions may be asked: why the amendment of the *Constitution* with the insertion of S. 254C, which gave *NIC* exclusive jurisdiction, if the *NICA* already conferred *NIC* with jurisdiction? Is it to duplicate the provisions in the *Constitution*? Why did the *Constitution* not simply say, the jurisdiction of the *NIC* is as contained in S. 7 of the *NICA*, if it still wanted to retain the whole of S. 7 of *NICA*? The *Constitution* did not want to because; the *Constitution* is where to find the jurisdiction of the *NIC*, if it must be a superior court. With the constitutional jurisdiction of the *NIC*, S. 7 of *NICA*, save S. 7(4), is dead [44].

The effect of the constitutional abridgments of the hitherto unlimited jurisdiction of the *SHC* in favour of the *FHC* and the *NIC*, is that, the *SHC* and the *FCTHC* now have exclusive residual jurisdiction over all items not covered by the exclusive constitutional jurisdictions of both the *FHC* and the *NIC*, such that, to newly take anything away from the *SHC* and the *FCTHC*, even concurrently, must be by proper constitutional amendment in accordance with S. 9 of the *Constitution*, for such further abridgment to be valid. Hence, where would the *NASS*, by an ordinary Act, get the subject to excise, as additional jurisdiction to the *NIC*, when there is no subject that is not already within the jurisdiction of one superior court or the other? There is none. Since the *Constitution* has taken away the jurisdictions of all other superior courts of first instance on all labour and

[38] *N.U.E.E. v. B.P.E.* op cit.

[39] "*The Imperative of Harnessing the Jurisdiction and Powers of the National Industrial Court of Nigeria*", Ife Juris Review, (2016) IFJR, Part 1 (Jan.-March).

[40] S. 9 *of the Constitution*. See also, *N.U.E.E. v. BPE* [supra] 38 – 39, F–A.

[41] *NUEE v. BPE* op. cit.

[42] Just like the residual jurisdiction of the states in the residual list of the *Constitution*, except in relation to the optional superior courts created in S. 6(5)(f)-(i) of the *Constitution*, which can sometime cut off parts of the jurisdictions of the *SHC* and *FCTHC* by virtue of SS. 262, 267, 277 & 282.

[43] *N.U.E.E. v. B.P.E.*, op cit.

[44] S. 1(1)&(3) *Constitution*, *NUEE v. BPE* op. cit and, *INEC v. Musa* op. cit.

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employment matters and matters incidental thereto or connected therewith, the implication of the *NIC* refusing to exercise its jurisdiction and powers to register and enforce foreign judgments on labour causes, is that, no court in Nigeria would be able to register and enforce such foreign labour judgments! That is the frightening implication of *NIC* divesting itself of jurisdiction to enforce foreign labour judgments. And if any other court does, such exercise of jurisdiction would be illegal and cause frivolous appeals, thereby unwittingly contributing to uneasiness in doing labour justice in the current globalized labour market in Nigeria. The attendant rigmaroles and delays would simply turn Nigeria into a pariah in comity and, negatively impact the flow of foreign labour, commerce and revenues into Nigeria, via enforcement of foreign labour judgments in aid of the globalized labour market.

It is noted, that, the decision in *Saxton's case*, was partly anchored on the distinction between jurisdiction and power and its implication on registration and enforcement of foreign judgments and, the powers of the *NIC* thereto. What is paramount here is S. 2(1) of the *FJA*. It is the section that listed the superior courts and omitted the *NIC*. And the simple question is: whether, in the presence of S. 6(5)(cc) of the *Constitution* that now includes the *NIC* in the list of superior courts in Nigeria, the listing in S. 2(1) of the *FJA* is still valid? This answer is no. It has never been valid, anyway, for duplicating S. 6(5) of erstwhile *1979 Constitution*, an act forbidden under the doctrine of covering the field[45]. What SS. 3 and 4(1) of the *FJA* granted, is not actually jurisdiction, but powers[46] to the superior courts in Nigeria to register and enforce foreign judgments thus, suggesting that, any superior court in Nigeria might be able to register and enforce any foreign judgment regardless of the subject matter and absence of jurisdiction thereto, since such court would not be exercising jurisdiction and; as such, S. 2(1) of the *FJA* could lawfully limit the participation of the *NIC* in the judicial exercise of these powers. First, the *NIC*, being now a superior court, has the right to exercise any statutory power of superior courts by virtue of S. 6(3) of the *Constitution* and could therefore, not be sidetracked by S. 2(1) of the *FJA*, which omits it from the list of superior courts. In the second place, though, the language of S. 4(1) *FJA*, taken in isolation, seems to suggest the ouster of the *NIC*. Keen study shows that, this is a misconception arising from failure to take cognisance of the correlation between jurisdiction and power.

This might be as a result of the subtleness of the distinction and correlation between them and, the attendant fogs arising there from. The law is that, the provisions of a statute must be given community construction[47]. We are bound to give all relevant provisions of the *FJA* community construction, to arrive at the legitimate implication on the issue of the jurisdiction and powers of the *NIC* to register and enforce relevant foreign judgments. S. 4(2)(d) of the *FJA* clearly suggests that, the *NIC* has the full *vires* contrary to S. 4(1); and points to the fact that, the issue of jurisdiction in the municipal superior court, is important in the enforcement of foreign judgments. It says:

> "The registering court shall have the same control over the execution of a registered judgment, *as if the judgment had been a judgment originally given in the registering court* and entered on the date of registration."

What the above quotation suggests is that, from the date of registration, the foreign judgment transmutes to one given by the registering municipal court. The transmutation could not have happened, if the registering municipal court originally lacked jurisdiction to give that type of judgment. Embedded therefore, in the provision, is the assumption that, the registering municipal court has prior jurisdiction to give that type of judgment. So, what SS. 3 & 4 of the *FJA* did, was to provide the manner of exercising the substantive jurisdiction constitutionally conferred on the *NIC* on labour matters with regard to how to register and enforce foreign judgments appertaining to labour matters: that's, power to convert and enforce foreign judgments on labour matters. Jurisdiction is the key to a court's power: without jurisdiction, a court cannot exercise any power.

So, substantive jurisdiction was the pedestal in the *FJA* and *REJA*. Apropos, judgment of a foreign superior court can only be, as if it had originally been given by the registering municipal superior court, if and only if, that registering municipal superior court originally had jurisdiction over the subject matter of the judgment, had the case been originally filed before it and heard and decided by it. Clearly, a *legal fiction*[48] is postulated. And the legal fiction postulated is that, the said 'foreign judgment', subject matter of the local registration and enforcement, is deemed actually given by the registering municipal court with the requisite jurisdiction. If the municipal court lacked jurisdiction *ab initio*, it could not be dissimulated that, it gave the foreign judgment. A court without jurisdiction could not be deemed to have given a decision over a subject matter on which it lacked jurisdiction. The axiom of the foregoing is what Shoda and Davies [supra] obliquely recognised by saying:

> "Apart from the items specifically earmarked for the Federal High Court of Nigeria, the High Court of a State has jurisdiction to entertain all applications for recognition and enforcement of foreign judgments. It is advisable, however, that *the Court that has complete jurisdiction over the subject*

[45] *INEC v. MUSA* op. cit.
[46] In accordance with S. 254D(1)&(2) *Constitution*.
[47] *Buhari & Anor v. Yusuf & Ors* (2003) LPELR-812 (SC) 20, D-F.
[48] *Black's Law Dictionary* [Ninth Ed.), 976.

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matter should be chosen by the Creditor when seeking to register the foreign judgment." – Para. 2.8.

The authors regrettably failed to follow the logic of their illuminating reasoning in the second sentence of the quotation, as italicized above. From the preceding sentence, their thoughts appeared ambivalent; suggesting that, the applicant has a choice in that, the *SHC* has omnibus jurisdiction in that behalf. It is logical inference that, only a court with requisite jurisdiction over the subject matter of a foreign judgment to be enforced, is the court that can be approached and; that, it is incorrect to hold, as they did, in the sweeping statement of the first sentence thereof that, the *SHC* has a sort of residual jurisdiction to exercise general powers to enforce all types of foreign judgments, regardless of the subject matters. This sweeping assertion with respect to the power of the *SHC* to enforce foreign judgments negated even the power of the *FCTHC* directly listed by S. 2(1) of the *FJA*. By listing all the then superior courts, S. 2(1) of the *FJA* demonstrated clearly the need to approach the particular court with the requisite jurisdiction on the subject matter of the judgment to be registered for enforcement; otherwise, there was no need.

These same errors, with the utmost respect, also afflicted the decision of the *Court of Appeal* in *Kabo Air Limited v. The O' Corporation Limited*[49] when it tied the jurisdiction and powers of the *FHC* to register and enforce foreign judgments on aviation to section 2(1) of the *FJA*, even after it had correctly opined that, S. 6(1), (3)&(5)(c) of the *Constitution* listed the *FHC* as a superior court, while S. 251 gave it exclusive jurisdiction on aviation. It is in this respect too, that, the postulation of Ananaba in his erudite book[50] that, the *FHC* lacks jurisdiction to register foreign judgments because, being debts, are not covered by section 251 of the *Constitution* because, they are not related to the administrative or executive decisions of the federal government, must be seen, with the utmost respect, as misconceived. Axiomatically, enforcements of foreign judgments follow the pattern of jurisdictions laid down by the *Constitution* for each and every of the superior courts.

How can a particular municipal registering superior court fit into the legal fiction, if it originally lacked jurisdiction over the subject matter and, there is actually another court with the requisite jurisdiction? After all, the *FHC* has been enforcing monetary judgments that emanated from it locally. If a court lacks jurisdiction by virtue of the municipal statute, it cannot be dressed in the robes of being deemed as the giver of a decision, alien to its jurisdiction. It would be self-contradictory, as it could not have given what it lacks *ab initio*. The whole of the law, practice and procedures of enforcement of foreign judgments on subjects over which it lacks jurisdiction, would be strange to it and; might ultimately negatively impact the enforcement orders to make. A foreign judgment registered in Nigeria can only appear, as if the superior municipal court originally gave it, if and only if, the superior municipal court is actually seised of jurisdiction over the subject matter of the foreign judgment brought before it for registration and enforcement. The powers exercised by courts follow their jurisdictions.

By this analogy, it is implied by force of logic that, it is only the municipal superior court vested with corresponding jurisdiction, as the foreign superior court that handed down the judgment to be enforced in Nigeria that, can be approached and; which will have the jurisdiction and power to register and enforce such judgment, power being offshoot of jurisdiction. A court has never been able to exercise power, where it lacks jurisdiction over the subject matter and persons of the suit: jurisdiction being always at the background of any exercise of power. And no statute in Nigeria can lawfully give to a court, power on a subject it constitutionally lacks substantive jurisdiction on. Hence, since the *FJA* is not the conferrer of jurisdiction on the *NIC*, but the *Constitution*, it could not have taken away its jurisdiction and powers on enforcement of foreign judgment on labour matters duly conferred by SS. 6(3) & 245C-(1) of the *Constitution*, enforcement being continuation of the original jurisdiction by which the judgment was given by way of judicial reciprocity. It could only spell out the manner of exercising the powers on enforcement of relevant foreign judgments arising from its cognate jurisdiction. The *Supreme Court*[51] carefully articulated the correlation between power and jurisdiction and the subtle but important legal implication when it held that: "power can only be exercised where the court has jurisdiction to do so…" *Adigun & Ors v. AG Oyo State & Ors*[52] is also pertinent. The *Supreme Court* says:

> "I think there is…fundamental error in construing Section 6(6)(a) of the Constitution as referring to the exercise of jurisdiction…the Constitution intended to draw and did draw a clear distinction between the exercise of judicial powers in Section 6(6), and the exercise of jurisdiction vested in Courts established by the Constitution…"

It is clear from the two quotations above that, prior constitutional jurisdiction over the subject matter and persons must co-exist for a Nigerian court to exercise any power. Thus, prior jurisdiction over the subject matter and persons of a foreign judgment to be registered and enforced, must exist in the municipal registering superior court, for it to exercise the powers conferred on it by the *FJA* and the *REJA*, to register and enforce such judgments. It is now clear that, both

[49] (2014) LPELR-23616 (CA) 17-20, E-A.

[50] Paul C. Ananaba, *Recognition and Enforcement of Foreign Judgments and Awards in Nigeria*, Jamiro Press Link, 2, Ota St., Olorunshogo, Mushin, Lagos, Nigeria, 2017, 116.

[51] *Ajomale v. Yaduat & Anor* op cit. 8-9, E-D.

[52] (1987) LPELR-40648 (SC) 66-67, A-68

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statutes conferred powers and not jurisdiction and therefore, cannot stop a court constitutionally conferred with cognate jurisdiction from assuming the jurisdiction to exercise the power of registering and enforcing foreign judgments appertaining to its jurisdiction. Thus, the question the *NIC* should have asked itself in *Saxton's case* [supra] is: had the facts of the case arisen in Nigeria and the case filed in the *NIC*, would it have had jurisdiction? Being a labour matter, it undoubtedly would have had jurisdiction; and would have logically had the subsequent power to enforce its own judgment thereto. That is what the *AJA* and *REJA* envisage in the dissimulative powers granted. Had the common law enforcement mode been employed, by filing fresh suit, barring the unproved status of the foreign court, the *NIC* would have undoubtedly had exclusive jurisdiction. Therefore, the *NIC* undoubtedly has the substantive jurisdiction and statutory powers to enforce the foreign judgment in *Saxton's case*, but could not, for failure to fulfill the conditions precedent to assumption of jurisdiction[53].

While the decision is right, citing section 2(1) of the *FJA,* as the reason for the lack of substantive jurisdiction, and not that the case did not satisfy conditions precedent, respectfully, was an unintended error, arising from the ethereal nature of the subtlety of the distinction between jurisdiction and power and, their paradoxical correlation. As the matter was undoubtedly labour matter, it should have been clear, the *NIC* had the substantive jurisdiction, irrespective of S. 2(1) of the *FJA*, since the *FJA* is not the conferrer of the *NIC's* substantive jurisdiction or that of any superior court for that matter; and could not therefore, have taken away the substantive jurisdiction, duly conferred on the *NIC* by the *Constitution*. The *NIC* should simply have held in *Saxton's case* that, because, the applicant failed to meet the conditions precedent for recognition, it could not assume jurisdiction to exercise the power to recognise the foreign judgment, instead of holding that, it lacked substantive jurisdiction.

The term 'condition precedent' means, a condition that must be fulfilled for a court to assume jurisdiction and not, lack of jurisdiction. It is different from jurisdiction but clogs the assumption of jurisdiction, if not fulfilled[54]. Once the condition precedent of proving the status of the foreign court that gave the decision as a superior court, is not met, the relevant municipal court with substantive jurisdiction over the subject matter cannot assume jurisdiction to recognise the foreign judgment. It must be noted that, for a municipal court to recognise a foreign judgment, it assumes jurisdiction first and, thereafter exercises its statutory powers to convert[55] the foreign judgment to that of the municipal court and thereafter, enforces it. The slip arose from the assumption that, the *FJA* conferred jurisdiction to recognise and execute foreign judgments, whereas, it only conferred powers, which are wholly dependent on the substantive jurisdiction duly conferred by the *Constitution*.

It needs be pointed out that, whether or not there are the *FJA* and *REJA*, the superior courts, have always had the jurisdiction to enforce foreign judgments by way of summary rehearing under *Common Law* and, the consequential inherent powers to enforce them. The powers they did not recognise hitherto and did not exercise, was to do away with rehearing by way of filing fresh suit and instead, go straight ahead, to recognise, register and enforce them. It means the idea of conversion, registration and enforcement was not part of the inherent powers under *Common Law*, which has now been statutorily conferred on them. Those are the new statutory powers that the *RJA* and the *REJA* introduced. Nothing more. Both statutes did not confer jurisdiction on the superior courts, but only powers to adopt another manner of enforcing foreign judgments: that is, another manner of exercising the jurisdiction already conferred by the *Constitution*. Hence, it follows that, where a court is to exercise its discretion to make enforcement orders on a foreign judgment, one of the factors it must consider is: is the foreign judgment the product of a subject matter over which it has jurisdiction, which could make it look as if, it was the court that originally handed down the foreign judgment? And in doing this, consideration of the fact: whether, had the case originally been filed before it, it would have had jurisdiction, crops up and; where it comes to the conclusion that, had the case been originally filed before, it would not have had jurisdiction, it simply declines to enforce such foreign judgment[56]. It is as simple as that.

That the provisions of both *FJA* and the *REJA* insist that only superior courts can exercise the powers to register and enforce foreign judgments in Nigeria, is not by chance. It is borne out of the knowledge that, superior courts of first instance, which was originally only the *High Court* [*HC*], originally had unlimited jurisdiction; and thus, being imbued with the requisite jurisdiction over all matters, fits readily into the legal fiction and, was able to register and enforce all types of

[53] *Eti-Osa LGA v. Jegede & Anor (2007) LPELR-8464* (CA) 7-8, F-C and *Agboola v. Agbodemu & Ors* (2008) LPELR-8461 (CA) 70, F.

[54] *Virgin Nigeria Airways Ltd v. Roijien* (2013) LPELR-22044 (CA) 32, 32, E-F.

[55] Hughes Hubbard & Reed LLP: Chris Pararella & Andrea Engels edit, "*The International Comparative Guide to: Enforcement of Foreign Judgments 2016 – Chapter 32 USA*", Global Group Ltd, London, 2016 at www.glgroup.co.uk [accessed 21/09/2022], para. 2.4. See also Williams & Connolly LLP: John J. Buckley, Jr. & Ana C. Reyes, "*Enforcement of Foreign Judgments Laws and Regulations USA 2022*", published 30/03/2022 at www.iclg.com [accessed 21/09/2022] para. 2.1.

[56] *Madasiru & Ors v. Onyearu & Ors* op. cit. 23-24, F-A.

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foreign judgments[57]. It would be realised that, both the *FJA* and *REJA* were enacted long before the fractionalization of the jurisdiction of the *HC* in Nigeria and; thus, implied that, everything was within the originally unlimited jurisdiction of the *HC* [now the *SHC*], as originally the only superior court of first instance in Nigeria[58]. The *FJA* was enacted in 1960 [No. 31 of 1960] and came into force 1st February 1961, while the *REJA* was originally enacted as a colonial Ordinance in 1922 [No. 8 of 1922] and came into force 19th January 1922[59]. It was compiled in the 1958 *Laws of Lagos* as Cap. 175. As the bifurcation of the jurisdiction of the *SHC* began, the *FJA* was amended in 1990 to include the *FHC* and, later, *FCTHC*. Had it been that, the *NIC* had been a superior court by then, it would logically have been included in S. 2(1) of the *FJA*. With the progressive amendments of the *FJA* to take care of the continual expanded list of superior courts in Nigeria, it is clear, the *FJA* envisaged that, only superior courts of corresponding jurisdictions on the subject matters and persons of the particular foreign judgments, are the proper municipal superior courts to approach, being that, the erstwhile parts of the unlimited jurisdiction of the *HC*, have been shared to the *FHC*, *FCTHC* and *NIC*.

With the balkanization of the originally unlimited jurisdiction of the *HC*, originally the only superior court of first instance, to *FHC*, *NIC* and [*FCTHC]* and, with their mutually exclusive civil jurisdictions, it follows that, the jurisdiction of the *SHC* is no longer unlimited, but now residually exclusive; and that, the appropriate court with the requisite jurisdiction on the subject matter of a foreign judgment is the one that must now be approached. That, the *FJA* was amended to accommodate both the *FHC* and the *FCTHC*, points to the fact that, the *FJA* intended that, only the superior courts with like jurisdictions to the foreign courts that gave the judgments to be registered, must be the courts to approach. The *FHC* is obviously accommodated to take care of the relevant foreign judgments appertaining to its jurisdiction, like the *FCTHC* with regard to its territorial jurisdiction. Otherwise, it would not have been necessary to amend the *FJA* to accommodate these new courts.

S. 104-109 of the *Sheriffs and Civil Process Act* [***SPCA***], which deals with reciprocal enforcement of the judgments between States of the Nigerian Federation[60], illustrates the jurisdictional reciprocity underlining the registration and enforcement of foreign judgments amongst the local courts and points to the soundness of the proposition that, only courts with jurisdiction over the subject matters of a foreign judgment can entertain application in that behalf. S. 105(2)&(3) of the *SCPA* provides:

> "(2) From the date of the registration the certificate shall be a record of the Court in which it is registered and shall have the same force and effect in all respects as a judgment of that Court, and the like proceedings may be taken upon the certificate *as if the judgment had been a judgment of that Court*.
>
> (3) For the purpose of this section –
>
> (a) the High Court…of the several States and the Capital Territory are courts of like jurisdiction to one another;
>
> (b) the magistrates' courts exercising jurisdiction in the several States and the Capital Territory are of like jurisdiction to one another."

The above excerpt is a clearer example of the *legal fiction* postulated by S. 4(2)(d) of the *FJA*, which has been expounded earlier on. It clearly shows that, enforcement of judgments of one State's court in that of another State's court can only happen between courts of like jurisdictions and that, only like proceedings that could have been taken in the original court that gave the judgment, could be taken in the other State's court. The above excerpt even goes further to list the corresponding courts of like jurisdictions. S. 4(2)(d) of the *FJA* provides in like manner that, the foreign judgment shall be "…as if the judgment had been a judgment originally given in the registering court…and as if the judgment had been a judgment of that court." It is clear that, their wordings are very similar and that, S. 4(2)(d) of the *FJA* merely fell short of listing the corresponding courts of similar jurisdiction. And the reason for this omission is obvious. It is an impossibility to start listing the corresponding courts of the too numerous countries of the world. It is clear that both SS. 4(2)(d) of the *FJA* and 104-105(2)&(3) of the *SCPA* treat subject matters of like natures: enforcement of the judgment of one court in another that did not give the judgment. A Federation, being composed of autonomous states, which are analogous to different countries, has similar provisions. S. 3(3)(b) of the *REJA*, which is similar to S. 105(1) of the *SCPA*, proves further, the correctness of this view, by clearly providing that:

> "The registering Court shall have the same control and *jurisdiction* over the judgments as it has over similar judgments given by itself, but in so far only as relates to execution under this Ordinance."

The *REJA* enjoins composite construction with the *FJA*[61]. It is thus very clear that, jurisdiction is central to the legal dissimulation postulated in the jurisprudence of enforcing the judgments of one court in another: ditto, judgments of foreign courts in the courts of other countries. The question is: how can a judgment from another superior court have the same force and effect in

[57] *Musaconi Limited v. Aspinall* (2013) LPELR-20745 (SC) 36-37, F-A.
[58] *Sifax Nigeria Limited & Ors v. Migfo Nigeria Limited & Ors* (20180 LPELR-49735 (SC) 110-111, G-F.
[59] *Grosvenor Casinos Limited v. Halaoui* (2009) LPELR-1340 (SC) 19, A.
[60] *Skye Bank (Nigeria) Plc v. Seph Investment Ltd & Ors* (2016) LPELR-40296 (CA) 1-20. Ogun State High Court's judgment was executed partly in both Ogun and Osun States to realise the full judgment debt.
[61] *Witt & Busch Ltd v. Dale Power Systems Plc* op. cit., 9-13, D-A.

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all respects as a judgment of the registering superior court, if it is not the type of judgment the registering superior court used to give? It won't. To successfully practice the art of dissimulation, which the *legal fiction* suggests, the dissimulator must have the capabilities of giving what is to be feigned, to evoke conviction. The thing to be feigned must be one attuned to its nature. To cover the deficiency of not being the original court that gave the judgments is the reason for the dissimulative transmutation, which is why jurisdiction is so central to it. Only a court that has jurisdiction can perform the transmutation.

A goat cannot give birth to an elephant. Thus, it is clear that, before any municipal superior court can entertain any application to register and enforce foreign judgment in Nigeria, both under the *REJA* and *FJA*, it must be seised of jurisdiction over the subject matter and persons of the foreign judgment. It is the prior jurisdiction in the registering municipal court, by which the foreign judgment to be enforced was dissimulated as handed down by the registering municipal court, that still enabled the registering municipal court, to exercise its statutory powers, under the *FJA* and the *REJA*, to register and enforce the foreign judgment. For a court to sit on any matter, including applications for enforcement of foreign judgments, it must have both subject matter and party jurisdiction. That exactly is the position in the *USA*, a federal state like Nigeria. Hughes Hubbard & Reed LLP [supra] observed of the *USA*[62]:

> "To recognise and enforce a foreign judgment, a U.S. court must generally have: (1) personal jurisdiction over the judgment or jurisdiction over the judgment debtor's assets in the forum state; and (2) *subject matter jurisdiction over the action*."

The erudite authors opined on the issue of subject matter jurisdiction that, it is only relevant to federal court, which has limited exclusive jurisdiction on diversity issues, where the judgment debt exceeds $75,000 or, where matters affecting federal laws are involved. Besides, the erudite jurists opined that, the concept of recognition, means conversion of the foreign judgment into a *USA* municipal judgment, by approaching the municipal court [federal or state court] with the jurisdiction, which would assume jurisdiction to convert it to its own[63]. The authors also pointed out that, the state courts in the *USA* have general subject matter jurisdiction. It could be seen that, apart from the few instances handled by the *Federal District Court*, the equivalence of the *FHC* in Nigeria, there are no specialized courts in the *USA*, which distinguishes Nigeria, with the *NIC* as a fully specialized court. Nonetheless; the authors clearly indicated that, court to recognise and enforce foreign judgments must possess both personal and subject matter jurisdiction; and for that reason, relevant foreign judgments for enforcement in the *USA* must go to the federal court in the few instances where the state courts lack jurisdiction on the subject matters[64].

The same thing must be applicable in Nigeria. We have the *FHC* and the *suit* as courts with exclusive federal jurisdiction and, the *NIC* is a specialized labour court. Hence, foreign judgments on labour relations, over which only the *NIC* has exclusive civil jurisdiction, could only be registered, recognised and enforced by the *NIC*. That has been the position in most of the countries of South America where their labour courts have jurisdiction to enforce foreign decisions[65]. This makes more poignant, the concept of transmutation, as one arising from the exercise of the municipal court's jurisdiction on the subject matter of the foreign judgment. It means the foreign judgment, by the recognition, is now pronounced judgment of the municipal court to enjoin the status of *res judicata*. That is where the distinction between recognition and enforcement becomes very significant. It is the recognition that converts the foreign judgment to local judgment of the relevant municipal court and, grants it *res judicata* status to make it enforceable between the parties or their assets now within the local jurisdiction[66]. The granting of recognition and registration creates fresh *res judicata* and, correlates with giving an enforceable decision by the local court.

It is therefore clear that, in *Saxton's case*, though, the *suit* truly lacked the conditions precedent for the NIC to assume jurisdiction by reason of failure of the applicant to provide evidence of reciprocity between the *USA* and Nigeria and that, the *District Court of Southern District of Texas* was a superior court and, not because *NIC* was not listed in S. 2(1) of the *FJA*. Otherwise than for the absence of these mandatory conditions precedent, the *NIC* has the jurisdiction and power, exclusive of all other superior courts in Nigeria, to register and enforce the foreign judgment, being a judgment emanating from labour relations. And in doing this, it was in vantage position to utilize the powers of the *HC* conferred on it by SS. 6(3) & 254D-(1) of the *Constitution* and, borrow rules pursuant to Order 1, Rule 9(1) of the *NIC Rules*, being that, *NIC* did not have its own rules in that regard. By community construction of SS. 2 & 5 of the *FJA* and 1(3), 6(3) & (5)(cc), 254C & 254F(1) of the *Constitution*, the *NIC*, being one of the superior courts in Nigeria, its President has the *vires* to make rules of court for the purposes of enforcement of foreign judgments in its sphere of jurisdiction, and with the exclusivity of its civil jurisdiction, all other superior

[62] para. 2.4 [supra].
[63] Ibid at 2.3.
[64] Williams & Connolly LLP [supra].
[65] ILO Labour Law and Reform Unit, "*Access to labour justice: Judicial institutions and procedures in selected South American countries*" [First published 2021] at https://www.ilo.org [accessed Jan. 12, 2023].
[66] Ibid.

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courts in Nigeria lack jurisdiction and power, wherever the *NIC* has.

It is therefore correct to say, it is because, a court has jurisdiction on the subject matter and parties in relation to enforcement of foreign judgments that, it can exercise the power to enforce relevant foreign judgments; as if they were ones it actually gave. And in this, I think matters of registration and enforcement of foreign judgments emanating from labour and employment matters are incidental thereto and connected therewith the subject matters and persons of the jurisdiction of the *NIC* and; the *NIC* would have exclusive jurisdiction and power in that regard, by virtue of SS. 6(3), 6(5)(cc), 254C-(1)(a) & 254D-(1) of the *Constitution* [as altered]. Since the *NIC* has the powers of a *HC*, why would it lack the power to enforce foreign judgments on civil causes within its realm? There appears to be no legal justification.

Being that such relevant foreign judgment is deemed to be its judgment by force of law[67], it has both inherent and statutory powers[68] to ensure that, the orders of the foreign courts deemed as its own, actually carry into effect. This is in line with the *Supreme Court's*[69] decision that: "Every Court has *inherent jurisdiction* to ensure that its order carries into effect the decision at which it arrived." The phrase "inherent jurisdiction", as italicized above, is used loosely, as a synonym for 'power' since the jurisdictions of courts are actually external and not inherent[70]. So, a court cannot have inherent jurisdiction, but only statutory jurisdiction. This further stresses the fact that, the courts exercise powers when enforcing foreign judgments, after having assumed jurisdiction to recognise the foreign judgments as theirs. So, the *NIC* is seised with the exclusive jurisdiction and powers to register and enforce foreign judgments in labour and employment matters to the exclusion of all other superior courts in Nigeria. This brings into focus the provisions of S. 10(2) of the *Interpretation Act*, which imbues a body that is conferred with power to act, with the corollary powers incidental to effectively doing the act.

This is in consonance with the very subtle but salient point imbued in S. 6(3) of the *Constitution*, to the effect that, regardless of the court directly conferred with a statutory power, like S. 2(1) of the *FJA*, which confers other superior courts, aside the *NIC*, with power to enforce foreign judgments, any superior court subsequently conferred with jurisdiction on a subject matter, like the *NIC*, now conferred with labour jurisdiction, is automatically incorporated in S. 2(1) of the *FJA*, to exercise the power. This is corollary of the doctrine of implied amendment[71]. S. 6(3) of the *Constitution* postulates that, each and every superior court in Nigeria has equal access to any cognate statutory power to lubricate its jurisdiction without further assurance, regardless of the court actually named in the enabling statute. The rationale is to solve the paradox of a court having jurisdiction and, lacking the necessary statutory powers to lubricate it, by reason of these powers being conferred on another court. S. 6(3) is different from S. 6(6)(a), which conferred all the superior courts with inherent powers.

Obviously, the two cannot be talking of the same thing, as the legislature is presumed not to use words in vain[72] plus the fact that, S. 6(6)(a) actually stated that, it is concerned with inherent powers: meaning, S. 6(3) is concerned with statutory powers, being the only other type of power. S. 54(2)(a) of the *NICA* is relevant here and, is actually in sync with S. 6(3) of the *Constitution*. It automatically inserts *NIC* into the sections of statutes that confer powers cognate to the lubrication of its jurisdiction but without naming it, as a court that can exercise the powers and, SS. 6(3) & 254D- (2) of the *Constitution* saved it. Thus, by the combined effect of SS. 6(3), 6(5)(cc), 254C of the *Constitution* and 54(2)(a) of the *NICA*, the *NIC* is deemed inserted into S. 2(1) of the *FJA* at the ascendancy of the *Third Alteration Act* in 2011 without any further assurance by dint of implied amendment[73], apart from the doctrines of constitutional supremacy and covering the field implied by S. 1(1)&(3) of the *Constitution*[74], earlier canvassed, as nullifying S. 2(1) *FJA*. Once foreign judgments on labour matters are deemed by law to be those of the *NIC* by dint of its exclusive civil jurisdiction, *NIC* automatically has the inherent and statutory powers to enforce them, including the exercise of the powers conferred in the *FJA* and *REJA*, which did not name it.

It must be noted that, the exercise of powers to register and enforce foreign judgments granted by the *FJA* and *REJA* have never been exercised in vacuum. The parties or, at least, their assets must be within the territorial[75] jurisdiction of the municipal superior courts, to be activated; and in this, the subject matter and persons' jurisdiction are paramount. This is not too dissimilar to the doctrine of *Port of State Control* in admiralty law, which is based too, on the presence of the parties or their assets within the municipal jurisdiction, irrespective of the foreign locus of the contract or of the breach. From the foregoing, it is clear that, in whatever way one looks at it, the *NIC* has the

[67] SS. 4(2)(a)&(b)&4(d) *FJA* and 3(3)(b) *REJA*.
[68] SS. 6(3)&6(6)(a) of the *Constitution*, 4 *FJA* and 3 *REJA*.
[69] *Bola & Anor v. Latunde & Anor* (1963) LPELR-15478 (SC) 6, A-B.
[70] *Adigun v. AG Oyo State & Ors* and *Ajomale v. Yaduat & Anor* [supra]
[71] *Akintokun v. LPDC & Ors* [supra] 62–63, C–A.
[72] *Ojibara & Ors v. The Governor of Kwara State & Anor* (2004) LPELR-13002 (CA) 62, D-E.
[73] *Akintokun v. LPDC* op. cit.
[74] *INEC v. Musa & Ors* op. cit.
[75] *Kabo Airline Limited v. The O' Corporation Ltd* (2014) LPELR-23616 (CA) 17-20, E-A.

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exclusive jurisdiction and power to enforce foreign judgments on labour matters. The research must therefore cruise to conclusion.

III. Conclusion

There is therefore, the urgent need for the *NIC* to cater for the procedures of exercising its civil jurisdiction to enforce foreign judgments. S. 6 *REJA* and SS. 5&13 *FJA* enjoin the relevant courts to make necessary rules. The *FHC* enacted its own rules[76]. Hence, the *NIC* must also make its rules. And because of the *NIC's* peculiarities, it is inexpedient to rely on the rules of non-specialised courts, though; it has the power to borrow from them[77]. Having its specially tailored rules, would further the aspirations of the nation to attune to international best practices in labour adjudications in order to boost the nation's economy. This is particularly relevant in the common law mode of enforcing foreign judgments, which is by way of filing fresh suit and rehearing, which means, it is fully subject to the *Third-Alteration-Act* innovations.

As S. 2(1) of the *FJA*, at "*superior court in Nigeria*", is all round problematic within the context of the current jurisprudence on the list of superior courts in Nigeria, it should be expunged. There is also urgent need, for a total overhaul of the two statutes relating to enforcement of foreign judgments in Nigeria, to bring them in tune with what obtains in the modern world. There is no reason for two separate statutes: one with problematic existence[78]. There is no reason too, why the Federal Attorney-General, has not drawn up the list of countries that would enjoy reciprocity with Nigeria on this important area of the law. This has become very urgent, if Nigeria truly desires economic development. There is yet no reason why the law on this important area, should not be simple and accommodative of the globalization of labour and commerce. The research signs off with the Nigerian *Supreme Court*'s admonition that[79]:

> "*… it is inimical to the interest of trade and commerce if Judgments in foreign countries cannot be readily enforced in Nigeria*… There is an urgent need to reform our law on this matter. It is an open invitation to fraud and improper conduct…"

[76] Order 52, Rules 16&17 of the *Federal High Court (Civil Procedures) Rules 2000*; *Heyden Petroleum Ltd v. Planet Maritime Co* (2018) LPELR-45553 (CA) 23-28, F-B and, *Kabo Air Limited v. The O' Corporation Limited* op. cit. 24-26, C-A.
[77] Order 1, Rule 9(1) of the *NIC Rules*.
[78] *Witt & Busch Limited v. Dale Power Systems Plc* op. cit. 26-29, C-A.
[79] *Grosvenor Casinos Limited v. Halaoui* [supra] 22-23, C.

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