

High Court Ruling on the Registration of the London Judgement on Dr Chiluba



Wednesday, 25 August 2010

This is an application by the judgment debtors to set aside the order that was made in the High Court on the 9th July, 2007, granting the judgment creditor leave to register, in the Zambian High Court, a judgment which the judgment creditors obtained in the London High Court of Justice, in the United Kingdom.

HIGH COURT RULING

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA
(CIVIL JURISDICTION)

2007/HP/FJ/004

IN THE MATTER OF : THE FOREIGN JUDGMENTS (RECIPROCAL
ENFORCEMENT) ACT, CAP 76 OF THE LAWS OF ZAMBIA;
AND

IN THE MATTER OF : RULE 3 OF THE FOREIGN JUDGMENTS
(RECIPROCAL ENFORCEMENT) RULES;

AND

IN THE MATTER OF : A JUDGMENT OF THE LONDON HIGH COURT OF
JUSTICE CHANCERY DIVISION OBTAINED IN CASE NO HCO4CO3129

BETWEEN:

THE ATTORNEY GENERAL JUDGMENT CREDITOR

AND

DR. FREDERICK JACOB TITUS CHILUBA

XAVIER F. CHUNGU

ATTAN SHANSONGA

STELLA MUMBA CHIBANDA

AARON CHUNGU

FAUSTIN MWENYA KABWE

IREEN KABWE

FRANCIS KAUNDA JUDGEMENT DEBTORS

Before : E. M. Hamaundu, J.

For the Judgment creditor : Mr A. J .Shonga, S.C., Attorney General
and Mrs M. Chomba, State Advocate

For the Judgment debtors : Mr E.S. Silwamba, Messrs Silwamba & Co.
Mr J.P. Sangwa and Mr R.M. Simeza,
Messrs Simeza Sangwa & Co

JUDGMENT

This is an application by the judgment debtors to set aside the order that was made in the High Court on the 9th July, 2007, granting the judgment creditor leave to register, in the Zambian High Court, a judgment which the judgment creditors obtained in the London High Court of Justice, in the United Kingdom.

Briefly, the background to this application is as follows: Having obtained a judgment in its favour in the London High Court of Justice on the 4th May, 2007, the judgment creditor, applied, ex parte, before my learned brother Mr Justice Japhet Banda(now deceased) for leave to register the said judgment in the Zambian High Court under the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, Chapter 76 of the Laws of Zambia. To support that application, the judgment creditor argued that the judgment which it sought to register would not be liable to be set aside under the Foreign Judgments (Reciprocal Enforcement) Act for the following reasons:

- (a) The judgment was one that was obtained within her Britannic Majesty's kingdom.
- (b) The courts of England and Wales had jurisdiction in the circumstances of the case and that the judgment debtors had submitted to the London High Court's jurisdiction by entering their respective defences, although they later opted to discontinue their participation in the trial
- (c) The defendants received notice of the proceedings in London, which were also available via video link in Lusaka but chose not to participate
- (d) The judgment was not obtained by fraud
- (e) The enforcement of the judgment would not be contrary to public policy and
- (f) The rights in the judgment are vested in the Zambian people.

Mr Justice Banda granted the Judgment Creditor leave to register the judgment. Mr Justice Banda also granted seven days within which any application to set aside the order granting leave would be made.

The judgment debtors, then, launched this application. Before it was heard, Mr Justice Banda died. The application was then allocated to me to deal with. Therefore, the order granting leave to the judgment creditor to register the said judgment shall be deemed to have been made by myself.

Together with the application, the judgment debtors filed affidavits sworn by Dr Frederick J.T. Chiluba, Mr Faustin M. Kabwe and Mr Aaron Chungu.

The affidavit of Dr Chiluba comprises, mainly, of an outline of the origin and purpose of the ZAMTROP account and an outline of the events leading to his being charged with criminal offences as well as to the civil action being commenced against him and fellow judgment debtors in the London High Court. The rest of the affidavit consists, mainly, of legal deductions and opinions.

The contents of the affidavit as regards the origin and purpose of the ZAMTROP account and the events leading to Dr Chiluba's indictment are outside the scope of the issues that I need to consider in this application. Therefore, I find it unnecessary to highlight those averments. The contents of the affidavit that comprise legal deductions and opinions contravene Order V rules 15 and 16 of our High Court Rules Chapter 27 of the Laws of Zambia. Similarly, I find it unnecessary to highlight those legal deductions and conclusions.

There are, however, some paragraphs which contain certain averments that are relevant to this application. I will highlight those.

Dr Chiluba averred as follows: when it was brought to his attention in the media that civil proceedings had been commenced against him and others in England, he, together with his fellow defendants, refused to submit themselves to the jurisdiction of the English Court. To that effect, they refused to accept service of process. As far as they were concerned, they were Zambian citizens who were resident in Zambia and had no business interest or asset in the United Kingdom or anywhere else in the world. In any case, their ability to defend proceedings instituted against them in England by the judgment creditor was hampered by their inability to travel to England to defend the action against them, since their freedom to leave Zambia had been restricted by bail conditions that were imposed on them in the criminal proceedings in Zambia. As Zambian defendants, they retained a solicitor in England with specific instructions to challenge the jurisdiction of the English court over them and to stay proceedings until the question of jurisdiction was settled. They advanced the following grounds to support their objection;

- (i) Zambia was a sovereign nation. The Zambian courts had jurisdiction to deal with civil claims in the same way that they were dealing with criminal proceedings against them,
- (ii) Zambia was the country with the most real and substantial connection to the claim against them because that is where the alleged frauds and conspiracies originated from and because that is where the judgment creditor and the judgment debtors were resident.
- (iii) Legal costs would be cheaper in Zambia than in the United Kingdom
- (iv) Since it is the Zambian Laws that were said to have been breached, it is the Zambian courts that were best suited to interpret Zambian Laws and
- (v) Witnesses in both the criminal and civil trials were based in Zambia.

The challenge was unsuccessful. The judgment debtors appealed to the Court of Appeal in England. That court also dismissed the objection. The judgment debtors were, then, denied leave to further appeal to the House of Lords. In order to appeal against the London High Court's rejection of their objection, the judgment debtors were advised that unless they filed defences to the judgment creditor's claim they would not be permitted to appeal to the Court of Appeal. For this reason, the judgment debtors were induced into submission and thus provided skeleton defences under protest. After it became clear that the judgment debtor's relentless resistance to the London High Court's jurisdiction would not achieve any desired result and that their participation in those proceedings would merely serve to legitimize proceedings that were avoidable, the judgment debtors withdrew from any further participation.

Those were Dr Chiluba's averments in so far as they are relevant to the issues at hand.

In their joint affidavit, Mr Faustin Kabwe and Mr Aaron Chungu agreed with the statements of fact raised by Dr Chiluba in his affidavit. The two deponents, then, proceeded to make averments that were devoid of fact but full of legal argument and other matters which are extraneous to the issues at hand. Therefore, I find it unnecessary to highlight any of those averments.

Another judgment debtor, Mrs Stella Mumba Chibanda filed separate summons to set aside the order granting leave to register the judgment. The grounds for her application were as follows;

- (i) The registration of the judgment contravened Section 4(3) of the Foreign Judgments (Reciprocal Enforcement) Act.
- (ii) There was lack of jurisdiction on the part of the court of origin
- (iii) There was fraud on the part of the applicant in securing the said judgment in London by suppressing material facts and also misrepresenting them.
- (iv) The proceedings in London were contrary to the Public Policy of the Republic of Zambia in that they breached the law of natural justice, the Constitution and other laws of the Republic of Zambia.

The affidavit in support of her application raised mainly issues in defence of the claim that was before the London High Court of Justice. I am not considering the merits of the claim that was before that court. I am only deciding whether the judgment of that court should be enforced by direct registration. Therefore, those issues are irrelevant to the application at hand. However, she did, in a few paragraphs, raise issues that are pertinent to this application. The relevant averments were as follows: She objected to the proceedings in the High Court in London because that court had no jurisdiction over her. The judgment creditor's statement of claim issued in the London High Court contained a world-wide freezing order which required her to list all the assets that she owned within three days. She felt intimidated by the said order and obliged. When she challenged the London Court's jurisdiction, the said court issued an "unless Order", compelling her to submit a defence failure to which her appeal against jurisdiction would not be heard. She obliged the order. However, she instituted proceedings here in Zambia to challenge the judgment creditor's decision to institute proceedings against her in the London High Court when; she was domiciled in Zambia, had no property or business in London and the action against her was in personam. Her submission to the jurisdiction of the London High Court was not voluntary. The proceedings via satellite were only available intermittently. Such proceedings were not a complete picture of what was happening in London. The judgment creditor suppressed a lot of material facts before the court in London and in some cases deliberately misrepresented and distorted the facts in a deliberate and fraudulent manner, much to her peril.

The judgment creditor filed an affidavit in opposition to the judgment debtors' application to set aside the order granting leave to register the London High Court judgment.

In that affidavit, the judgment creditor averred as follows:

The claim was brought as part of an effort to recover assets alleged to have been misappropriated and expatriated during the Presidency of Dr Frederick Chiluba. The causes of action pleaded against the judgment debtors were in conspiracy and for breach of fiduciary duty and dishonest assistance. All the judgment debtors, including those that have not applied to set aside the registration served a defence to the English proceedings, denying the judgment creditor's claim. The proceedings were not brought against the Zambian judgment debtors only but also against other debtors from different domiciles. Permission was sought by the judgment creditor to serve each of the judgment debtors outside the London High Court's jurisdiction. This was granted. The causes of action arose in London as well as in Zambia. Although the judgment debtors initially challenged the London court's jurisdiction, they subsequently accepted before the London High Court and the Court of Appeal that the English Court had jurisdiction to hear and determine the claims made by the judgment creditor against them. Upon the Claim Form being issued in the English proceedings, the Judge granted the judgment creditor a "freezing Order" which, inter-alia, required the judgment debtors to serve an affidavit of means setting out their assets. The Zambian domiciled judgment debtors served their affidavits of means, in belated compliance with the "freezing Order". The entire trial took place with a video link between the court in London and a chosen courtroom in Lusaka. The Judge came to sit at the chosen

courtroom in Lusaka as special examiner, to afford the judgment debtors a chance to give evidence before him. None of them attended before the Judge.

The judgment debtors filed further affidavits in which they averred that they had since appealed against the judgment of the London High Court.

On the 20th April, 2010, the judgment debtors, through, Mr Faustin Mwenya Kabwe, filed another affidavit re-capping and consolidating all the issues that they had raised in previous affidavits. I have already highlighted those issues in so far as they are relevant to this application.

Those were the averments from both sides.

In order to maintain the focus of this application, I will first consider the legal position as regards registration of foreign judgments and orders in Zambia.

Currently, there are two leading Supreme Court decisions concerning registration of foreign judgments in Zambia. The most recent decision was in the case of *Zanetta Nyendwa V Kenneth Paul Spooner, SCZ*. Judgment No. 20 of 2010. That case involved the registration, under the Foreign Judgments (Reciprocal Enforcement) Act, Chapter 76 of the Laws of Zambia, of an order made ex parte by the High Court of Justice, Family Division in England, which dealt with the return of two minor children to the court's jurisdiction. The Supreme Court held that the English Court's order was not capable of registration under the Foreign Judgments (Reciprocal Enforcement) Act for the following reasons;

- (a) that the order was not for the payment of money
- (b) that the order was neither final nor conclusive and
- (c) that the order was obtained ex parte, in the absence of the other party.

There is an earlier decision in the case of *Mileta Pakou & others V Rudnap Zambia Limited* [1998] ZR 233. That case involved the registration of a judgment for the payment of sums of money awarded by a Yugoslavian court. The Supreme Court held in that case;

- (a) that Yugoslavia was not one of the scheduled countries under the Foreign Judgments (Reciprocal Enforcement) Act and therefore the question of enforcing the judgment of its courts directly by registration did not arise and
- (b) that the law which applies in Zambia in default of any statute is the common law of England.

In that case, the Supreme Court did observe that even under common law the judgment did not meet the conditions required for it to be enforced.

A perusal of our statutes reveals that the Foreign Judgments (Reciprocal Enforcement) Act, is not the only statute by which all foreign judgments should be considered for registration. For example, maintenance orders made by foreign courts, being orders made in matrimonial proceedings are excluded from registration under the Foreign Judgments (Reciprocal Enforcement) Act. Yet maintenance orders made by the courts of England or Ireland are enforceable, here in Zambia, under the Maintenance Orders (Enforcement) Act, Chapter 56 of the Laws of Zambia. There is a special provision in that Act for their registration. Again, a decree of dissolution or annulment of marriage made by a foreign court is excluded from registration under the Foreign Judgments (Reciprocal Enforcement) Act. Yet such decrees are recognized under the Matrimonial Causes Act No. 20 of 2007. Another example is with regard to judgments made by courts of record in Zimbabwe or Malawi. Civil judgments from such courts are enforceable in Zambia under the Service of Process and Execution of Judgments Act Chapter 79 of the Laws of Zambia. This Act became part of our laws as an "Applied Act", that is, an enactment of the Legislature of the former Federation of Rhodesia and Nyasaland which came into force in Zambia by virtue of the Federation of Rhodesia and Nyasaland (Dissolution) Order in Council.

The position that emerges from the cases and the statutes that I have cited is thus; whenever a judgment creditor seeks to enforce, here in Zambia, a judgment or order made by a foreign court, the creditor should first consider whether judgments and orders of such foreign court are enforceable under the Foreign Judgments (Reciprocal Enforcement) Act or, indeed, under any other written law. If such judgments are not enforceable under any of our written laws, then the creditor should seek to enforce such judgment at common law.

Therefore, the first issue to be determined in this application is whether the judgment of the London High Court of Justice is enforceable either under the Foreign Judgments (Reciprocal Enforcement) Act or under any other written law.

On this issue, the judgment debtors, through submissions filed by their advocates on the 5th May, 2010 submitted that Part II of the Foreign Judgments (Reciprocal Enforcement) Act does not extend to the United Kingdom. In support of that submission, the judgment debtors argued as follows:

After the enactment of the Foreign Judgments (Reciprocal Enforcement) Ordinance in 1937, but before 1959, the position was:

- (a) Judgments by superior courts in the United Kingdom were automatically recognized and could be registered and enforced pursuant to the provisions of the British and Colonial Judgments Ordinance;

(b) Judgments from territories which were part of the United Kingdom dominions were to be registered and enforced pursuant to the British and Colonial Judgments Ordinance. However, there had to be reciprocity between Northern Rhodesia and the relevant dominion and also relevant orders had to be made;

(c) Judgments from countries which were not part of His Majesty's dominions, subject to compliance with Section 3 of the Act, had to be registered under the Foreign Judgments (Reciprocal Enforcement) Ordinance. Following the issuance of the Foreign Judgments (Reciprocal Enforcement) Order of 1958 and the repeal of the British and Colonial Judgments Ordinance in 1959, it meant that both foreign judgments and judgments from the dominions within the empire could be registered under one legislation, the Foreign Judgments (Reciprocal Enforcement) Ordinance. The issuance of the Order of 1958 did not mean that the judgments of superior courts from all of Her Britannic Majesty's dominions were recognized and enforceable in Northern Rhodesia. It merely meant that Part II of the Ordinance was available to all British dominions in the same way that it was available to foreign countries. For a particular British dominion to actually enjoy the benefits of Part II of the Ordinance in Northern Rhodesia, there was need for a second order, subject to the requirements of reciprocity being satisfied under Section 3 of the Ordinance. The second order would specify the dominion to which Part II of the Ordinance was to be extended and also the court in that dominion to be deemed a superior court for the purposes of the ordinance. Since the enactment of the Foreign Judgments (Reciprocal Enforcement) Act in 1937, and application of Part II of the Act to British dominions in 1958, Part II of the Act has not been extended to any foreign country. However, it has only been extended to two British dominions, the Solomon Islands and the Gilbert and Ellice Islands. In this case, the Governor first issued an order applying Part II of the Act to all British dominions. Then, the Governor followed that order with two orders extending Part II of the Act to the two dominions. If judgments from the United Kingdom were to be registered in Zambia, either the President or the Governor would have had to issue a further order, other than the Order of 1958, extending Part II of the Act specifically to the United Kingdom and designating some court within the United Kingdom to be a superior court. No such Order has ever been issued. Similarly, the Government of the United Kingdom did not issue a second specific Order in Council, extending a corresponding part of a similar Act in the United Kingdom to Zambia. Consequently judgments of Zambian courts cannot be registered in the United Kingdom under the Foreign Judgments (Reciprocal Enforcement) Act, 1933 (*Jamieson V Northern Supply Corporation (Private) Limited* [1970] Scots Law Times Report 113). In Zambia, in the absence of the second order specifically extending Part II of the Act to the United Kingdom and specifying, in the same order, the courts which shall be deemed superior courts, no judgment of a court in the United Kingdom can be registered.

On behalf of the judgment creditor, the Attorney-General submitted as follows:

As far as registration of Zambian judgments in the United Kingdom is concerned, it is the Administration of Justice Act, 1920 which is of relevance and not the Foreign Judgments (Reciprocal Enforcement) Act, 1933. The latter Act does not apply to Zambia. Hence the *Jamieson* case was wrongly decided. Section 3 of the British and Colonial Judgments Act allowed the registration of English judgments in this country from 1922, when the Act was passed. That Act was repealed by the Foreign Judgments (Reciprocal Enforcement) (Amendment) Ordinance No.12 of 1959. Once an Order is made under Section 9(1) of the Foreign Judgments (Reciprocal Enforcement) Act, applying Part II of that Act to Her Britannic Majesty's dominions, the Foreign Judgments (Reciprocal Enforcement) Act would then have effect and the British and Colonial Judgments Act would cease to have effect except in relation to those parts of the said dominions to which the British and Colonial Judgments Act applied at the time of the order. The Foreign Judgments (Reciprocal Enforcement) Order passed in 1958 applied to Her Britannic Majesty's dominion. Even when the Order in Council applying Part II of the Foreign Judgments (Reciprocal Enforcement) Act to her Britannic Majesty's dominion was passed, The British and Colonial Judgments Act continued to apply to the registration of English judgments. After the British and Colonial Judgments Act was repealed in 1959, the Order in Council passed in 1958 automatically extended to English judgments under Section 9(1) of the Foreign Judgments (Reciprocal Enforcement) Act. A second Presidential Order extending Part II of the Act to a specific dominion is not necessary. Once an order is made under Section 9(1) extending the application of Part II to her Britannic Majesty's dominions, such order is, without anything more needed to be done, effective. A further order under Section 3 is totally unnecessary. Section 3 deals exclusively with "foreign countries" while Section 9 deals with Her Britannic Majesty's dominions. Therefore, English judgments are registrable in Zambia under the Foreign Judgments (Reciprocal Enforcement) Act. Those were the submissions on the issue.

Section 9 of the Foreign Judgments (Reciprocal Enforcement) Act provides as follows:

"9(1) The President may by statutory order direct that this part shall apply to Her Britannic Majesty's dominions and to judgments obtained in the courts of the said dominions as it applies to foreign countries and to judgments obtained in the courts of foreign countries, and, in the event of the President so directing, this Act shall have effect accordingly, and the British and Colonial Judgments Act, Chapter 16 of the 1959 edition of the Laws shall cease to have effect except in relation to those parts of the said dominions to which it extends at the commencement of the Order (2) If, at any time after the President has directed as aforesaid, an order is made under section three extending this part to any part of Her Britannic Majesty's dominions to which the British and Colonial Judgments Act, Chapter 16 of the 1959 Edition of the Laws extends as aforesaid, the said Act shall cease to have effect in relation to that part of Her Britannic Majesty's dominions,

except as regards judgments obtained before the commencement of the order.”

This Section, apart from minor amendments such as the title “President” in place of the title “Governor” and “Statutory Order” in place of “Order in Council” has the same wording as it had prior to the Foreign Judgments (Reciprocal Enforcement) (Amendment) Ordinance No. 12 of 1959.

The British and Colonial Judgments Act was enacted, primarily, to provide legislation by which judgments of Superior Courts in the United Kingdom would be registered in Northern Rhodesia. Hence, Section 3 thereof provides for the registration of judgments obtained in the High Court in England or Ireland or in the Court of Session in Scotland. It was not necessary for the Governor of Northern Rhodesia to issue any order extending the Act to the United Kingdom before judgments of Superior Courts in the Kingdom would be considered for registration. However, the Governor had a discretion to extend, by declaration, the application of the Act to any of Her Majesty’s dominions outside the United Kingdom.

Up until 1959, judgments obtained in the United Kingdom and those obtained in certain of Her Britannic Majesty’s dominions to which the British and Colonial Judgments Act had been extended were registrable under that Act while judgments outside Her Britannic Majesty’s dominions were deemed to be “foreign” and therefore registrable under the Foreign Judgments (Reciprocal Enforcement) Ordinance. Under Section 9(1) of the Ordinance, the Governor had a discretion, by Order in Council, to direct that judgments obtained in the courts of Her Britannic Majesty’s dominions be considered for registration under the same provisions by which judgments obtained in foreign countries were considered. However, such directive would not affect judgments obtained in the Superior Courts of the United Kingdom or in the Superior Courts of those dominions to which the British and Colonial Judgments Act extended. Under Section 9(2) of the Foreign Judgments (Reciprocal Enforcement) Ordinance, the Governor could, having directed that Part II of the Ordinance shall apply to Her Britannic Majesty’s dominions, issue a further order, extending Part II of the Ordinance to those of Her Britannic Majesty’s dominions that had not been affected by the first order by virtue of the fact that the British and Colonial Judgments Act had been extended to them. In that event, such dominions would now become affected by the second Order and the British and Colonial Judgments Act would cease to apply to them. It should be noted that no similar provision was prescribed for judgments obtained in the Superior Courts of the United Kingdom, for whom the British and Colonial Judgments Act was enacted. The reason is obvious. Section 9 of the Foreign Judgments (Reciprocal Enforcement) Ordinance was enacted when the British and Colonial Judgments Act was very much in force. It would not make sense to apply the provisions of Section 9 of the Foreign Judgments (Reciprocal Enforcement) Ordinance to judgments obtained in the United Kingdom without specifying what would remain of the British and Colonial Judgments Act. Therefore, in my view, Section 9 of the Foreign Judgments (Reciprocal Enforcement) Ordinance was meant for those of Her Britannic Majesty’s dominions outside the United Kingdom. When, therefore, the Governor, by Gazette Notice No. 28 of 1958, directed that Part II of the Foreign Judgments (Reciprocal Enforcement) Ordinance shall apply to Her Majesty’s dominions outside the Territory, that did not include the United Kingdom. Further, the order did not affect any of Her Britannic Majesty’s dominions to which the British and Colonial Judgments Act had been extended.

In 1959, the British and Colonial Judgments Act was repealed by the Foreign Judgments (Reciprocal Enforcement)(Amendment) Ordinance No. 12 of 1959. At that time, no alternative legal provision had been made for the registration of judgments obtained in the Superior Courts of the United Kingdom. Such judgments did not become automatically registrable under the Foreign Judgments (Reciprocal Enforcement) Ordinance because the Governor’s Order of 1958 did not apply to the United Kingdom. Even assuming that the said order did apply to the United Kingdom, judgments obtained in the courts of the United Kingdom were at that stage exempt from the effect of the order. The United Kingdom would have only become affected if the Governor had proceeded under Section 9(2) of the Foreign Judgments (Reciprocal Enforcement) Ordinance to issue a further order extending Part II of the Ordinance to the Kingdom. At the time that the British and Colonial Judgments Act was repealed, the Governor had not issued any further order extending Part II of the Foreign Judgments (Reciprocal Enforcement) Ordinance to the United Kingdom or indeed to those of Her Britannic Majesty’s dominions that were exempt from the effect of the first Order of 1958.

Therefore, after the repeal of the British and Colonial Judgments Act, judgments obtained in Superior Courts of the United Kingdom would only become registrable under the Foreign Judgments (Reciprocal Enforcement) Act if and when the Governor (subsequently, the President) issued an order extending Part II of the Act to the United Kingdom. I have looked through our laws for such an order. I have been unable to find any. This means that the Foreign Judgments (Reciprocal Enforcement) Act, does not apply to the United Kingdom at present and, therefore, the question of enforcing the judgments of the courts of the United Kingdom directly by registration under that Act does not arise. It follows that I need not consider the issues that ordinarily would have to be considered by the court in Section 6 of the Act.

I have searched in our laws, including the “Applied Laws” for any other statutory provision by which judgments obtained in the courts of the United Kingdom can be enforced by direct registration. Other than

the Maintenance (Enforcement) Orders Act and, perhaps, the Matrimonial causes Act No. 20 of 2007, I have been unable to find any. Of-course, those two statutes do not apply to judgments for payment of money.

In the circumstances, the judgment creditor should have sought to enforce the London High Court's judgment by recourse to the common law, under the principles of "Private International Law" or "Conflict of Laws", as the principles are alternatively known.

The following passages appear in Halsbury's Laws of England regarding enforcement of foreign judgments at common law. Paragraph 715 of the fourth edition provides:

"subject to certain qualifications, a judgment in personam of a foreign court of competent jurisdiction is capable of recognition and enforcement in England. Apart from statute, it will not be enforced directly by execution or any, other process, but will be regarded as creating a debt between the parties to it, the debtor's liability arising on an implied promise to pay the amount of the foreign judgment. The debt so created is a simple contract debt and not a specialty debt, and is subject to the appropriate limitation period. It is immaterial that the debtor dies before judgment is given by the foreign court and that the judgment is pronounced against his personal representative."

Paragraph 716 of the same edition provides:

"As a foreign judgment constitutes a simple contract debt only, there is no merger of the original cause of action, and it is therefore open to the plaintiff to sue either on the foreign judgment or on the original cause of action on which it is based, unless the foreign judgment had been satisfied."

The case of Mileta Pakou and Others V RUDNAP Zambia Limited contains passages to the same effect.

For our purposes what should be noted from these passages is that a judgment creditor wishing to enforce a foreign judgment at common law will have to commence an action founded on that judgment as a cause of action. The trial court will have to consider several rules, including the rule that the foreign court must have had jurisdiction over the defendant in accordance with the principles of conflict of laws before it can entertain the action.

Therefore, in the circumstances of this case, the judgment creditor ought to enforce the London High Court Judgment at common law by commencing an action founded on it as a cause of action. These proceedings do not constitute such an action.

For the foregoing reasons, the judgment debtors' application to set aside the order granting the judgment creditor leave to register the judgment of the London High Court of Justice succeeds. I hereby set aside the order that was granted to the judgment creditor on the 10th July, 2007.

In view of the legal issues that this matter has raised, I order that either side bear their own costs.

Dated theday of2010.

E. M. HAMAUNDU
HIGH COURT JUDGE