

CHAPTER 11:04
JUDGMENTS (INTERNATIONAL ENFORCEMENT)
ARRANGEMENT OF SECTIONS

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Act 16, 1981.

An Act to consolidate and amend the law relating to the enforcement in Botswana of judgments given in countries which accord reciprocal treatment to judgments given in Botswana, for facilitating the enforcement in other countries of judgments given in Botswana and for other purposes connected therewith.

[Date of Commencement: 25th September, 1981]

PART I
Preliminary (s 1)

1. Short title

This Act may be cited as the Judgments (International Enforcement) Act.

PART II
Judgments Generally (ss 2-12)

2. Interpretation

In this Part, unless the contrary intention appears-
"appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;

"country of the original court" means the country in which the original court is situated;

"judgment" means a judgment or order given or made by a court in any civil proceedings or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party, and includes an award in proceedings on arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;

"judgment creditor" means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;

"judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable under the law of the original court;

"judgments given in the High Court" include judgments given on appeal against any judgments so given;

"original court", in relation to any judgment, means the court by which the judgment was given;

"prescribed" means prescribed by rules of court;

"registering court", in relation to any judgment, means the court to which an application to register the judgment is made;

"registration" means registration under this Part.

(2) For the purposes of this Part, "action *in personam*" shall not include any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, insolvency, winding up of companies, lunacy, or guardianship of infants.

3. Application of Part II

(1) Where the President is satisfied that, in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any country, substantial reciprocity of treatment will be assured as respects the enforcement in that country of judgments given in the High Court of Botswana, the President may, by statutory instrument, order-

- (a) that this Part shall extend to that country; and
- (b) that such courts of that country as are specified in the order shall be the superior courts of that country for the purposes of this Part.

(2) Any judgment of a superior court of a country to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if-

- (a) it is final and conclusive between the parties thereto;
- (b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
- (c) it is given after the coming into operation of the order directing that this Part shall extend to that country.

(3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

4. Continuance of existing provisions

(1) This Part also extends to every country to which the United Kingdom Judgments Act applied immediately before the commencement of this Part.

(2) The President may by statutory instrument declare, as respects any country, that-

- (a) it is a country to which, by virtue of subsection (1), this Part extends; and
- (b) such courts of that country as are specified in the declaration are superior courts of that

country for the purposes of this Part,
and the declaration shall be conclusive as to those matters.

(3) The purpose of a declaration under subsection (2) is to facilitate the ascertainment of the matters to which it relates and the fact that a declaration has not been made as respects any country shall not affect the question whether, by virtue of subsection (1), this Part extends to that country or what courts are superior courts of that country.

5. Registration of judgment

(1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the High Court at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment given in those proceedings, after the date of the last judgment given in those proceedings to have the judgment registered in the High Court, and on the application the court may, subject to proof of the prescribed matters and to this Act, order the judgment to be registered.

(2) A judgment shall not be registered if at the date of the application-

- (a) it has been wholly satisfied; or
- (b) it could not be enforced by execution in the country of the original court.

(3) Subject to the provisions of this Act with respect to the setting aside of registration-

- (a) a registered judgment shall, for the purposes of execution, be of the same force and effect;
- (b) proceedings may be taken on a registered judgment;
- (c) the sum for which a judgment is registered shall carry interest; and
- (d) 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.

(4) Execution shall not issue on the judgment so long as, under this Act and the rules of court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside, or, where an application is made, until after the application has been finally determined.

(5) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of Botswana the judgment shall be registered as if it were a judgment for such sum in the currency of Botswana as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.

(6) If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.

(7) If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgments may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

(8) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment may be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

6. Rules of court

(1) Rules of court may provide-

- (a) for the giving of security for costs by persons applying for the registration of judgment;

- (b) for the matters to be proved on an application for the registration of a judgment and for regulating the mode of providing those matters;
- (c) for the service on the judgment debtor of notice of the registration of a judgment;
- (d) for the fixing of the period within which an application may be made to have the registration of the judgment set aside and the extension of the period so fixed;
- (e) for the method by which any question arising under this Part whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, is to be determined;
- (f) for any matter which under this Part is to be prescribed.

(2) Rules made for the purposes of this Part shall be expressed to have, and shall have effect, subject to any such provisions contained in orders made under section 3 as are declared by the said orders to be necessary for giving effect to agreements made between the Republic and other countries in relation to matters with respect to which there is power to make rules of court for the purposes of this Part.

7. Cases in which registered judgment must, or may be set aside

(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment-

- (a) shall be set aside if the registering court is satisfied-
 - (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of this Act;
 - (ii) that the courts of the country of the original court had no jurisdiction in the case;
 - (iii) that the judgment debtor, being the defendant in proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
 - (iv) that judgment was obtained by fraud;
 - (v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or
 - (vi) that the rights under the judgment are not vested in the person applying for registration; or
- (b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section the courts of the country of the original court shall, subject to subsection (3), be deemed to have had jurisdiction-

- (a) in the case of a judgment given in an action *in personam*-
 - (i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court;
 - (ii) if the judgment debtor was a plaintiff in, or counterclaimed in, the proceedings in the original court;
 - (iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court;
 - (iv) if the judgment debtor, being a defendant in the original court, was at the time

- when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or
- (v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;
 - (b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action *in rem* of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;
 - (c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or (b), if the jurisdiction of the original court is recognized by law of the registering court.
- (3) Notwithstanding anything in subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction-
- (a) if the subject matter of the proceedings was immovable property outside the country of the original court;
 - (b) except in the cases mentioned in subparagraphs (i), (ii) and (iii) of paragraph (a) and in paragraph (c) of subsection (2), if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or
 - (c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

8. Powers of registering court on application to set aside registration

(1) If, on application to set aside the registration of a judgment, the applicant satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment, the court, if it thinks fit, may, on such terms as it may think just, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

(2) Where the registration of a judgment is set aside under subsection (1) or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgment creditor, order judgment to be registered for the balance payable at the date.

9. Foreign judgments which can be registered not to be enforceable otherwise

No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in Botswana.

10. General effect of certain foreign judgments

(1) Subject to this section, a judgment to which this Part applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether if it can be registered, it is registered or not, shall be recognized in any court in Botswana as conclusive between the parties thereto in all proceedings founded on the same cause of action

and may be relied on by way of defence or counter-claim in any such proceedings.

(2) This section shall not apply in the case of any judgment-

- (a) where the judgment has been registered and the registration thereof has been set aside on some ground other than-
 - (i) that a sum of money was not payable under the judgment;
 - (ii) that the judgment had been wholly or partly satisfied;
 - (iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or
- (b) where the judgment has not been registered, it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a).

(3) Nothing in this section shall be taken to prevent any court in Botswana recognizing any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognized before the commencement of this Act.

11. Power to make foreign judgments unenforceable in Botswana if no reciprocity

If it appears to the President that the treatment in respect of recognition and enforcement accorded by the courts of any country to judgments given in the superior courts of Botswana is substantially less favourable than that accorded by the courts of Botswana to judgments of the superior courts of that country, the President may by statutory instrument order that except in so far as the President may otherwise direct, no proceedings shall be entertained in any court of Botswana for the recovery of any sum alleged to be payable under a judgment given in a court of that country.

12. Issue of certificates of judgments obtained in Botswana

(1) Where a judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, has been entered in the High Court against any person and the judgment creditor is desirous of enforcing the judgment in a country to which this Part applies the court shall, on an application made by the judgment creditor and on payment of such fee as may be fixed for the purpose, issue to a judgment creditor a certified copy of the judgment, together with a certificate containing such particulars with respect to the action, including the causes of action, and the rate of interest, if any, payable on the sum payable under the judgment as may be prescribed.

(2) Where execution of a judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

PART III

Maintenance Orders (ss 13-22)

13. Interpretation

(1) In this Part, unless the contrary intention appears-

"**certified copy**", in relation to an order of a court, means a copy of the order certified by the proper officer of the court to be a true copy;

"**dependants**" means such persons as any person is, according to the law in force in the country in which a maintenance order was made, liable to maintain;

"**maintenance order**" means an order, other than an order of affiliation, for the periodical payment of sums of money towards the maintenance of the wife or other dependants of the person against whom the order is made, and includes an order or decree for the recovery or repayment of the cost of public relief or maintenance;

"**prescribed**" means prescribed by rules of court.

(2) This Part applies to any order whether made before or after commencement of this

Act.

14. Application of Part III

(1) This Part shall apply to England, Wales, Ireland and the Island of Jersey and to any other country in respect of which the President, having regard to reciprocal provisions under the law of that country, by statutory instrument so provides.

(2) If it appears to the President that the law of any country to which this Part applies no longer contains reciprocal provisions in relation to this Part, the President may by statutory instrument discontinue the application of this Part to that country.

15. Registration of foreign maintenance order

(1) A maintenance order made in a country to which this Part applies may be registered in the appropriate court in the prescribed manner and shall then be of the same force and effect and may be enforced as if the order had been an order originally given in that court on the date of registration.

(2) The appropriate court for the purposes of this Part shall, if the court by which the order was made was a superior court, be the High Court and, in any other case, be a magistrate's court.

(3) A certified copy of the order shall in the first instance be sent to the Minister for transmission to the appropriate court for registration.

16. Confirmation of foreign provisional order

(1) Where a maintenance order has been made in a country to which this Part applies and by the law of that country the order is provisional only and has no effect unless confirmed by a court in Botswana the provisions of this section shall have effect.

(2) If a certified copy of the order, together with the depositions of witnesses and a statement of the grounds on which the order might have been opposed, is transmitted to the Minister and it appears to the Minister that the person against whom the order was made is resident in Botswana the Minister may send the documents to any magistrate's court with a requisition that a summons be issued calling upon the person to show cause why the order should not be confirmed and the court shall issue such a summons and cause it to be served on that person.

(3) The summons may be served in the same manner as if it had been originally issued or subsequently endorsed by a court having jurisdiction in the place where the person happens to be.

(4) At the hearing it shall be open to the person on whom the summons was served to raise any defence which he might have raised in the original proceedings had he been a party thereto, but no other defence, and the certificate from the court which made the provisional order stating the grounds on which the making of the order might have been opposed if the person against whom the order was made had been a party to the proceedings shall be conclusive evidence that those grounds are grounds on which objection may be taken.

(5) If at the hearing the person served with the summons does not appear or, on appearing, fails to satisfy the court that the order ought not to be confirmed, the court may confirm the order either without modification or with such modifications as the court upon hearing the evidence thinks fit.

(6) If the person against whom the summons was issued appears at the hearing and satisfies the court that for the purpose of any defence it is necessary to remit the case to the court which made the provisional order for the taking of any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(7) Where a provisional order has been confirmed under this section, it may be varied or rescinded as if it had originally been made by the confirming court, and where on an application for rescission or variation the court is satisfied that it is necessary to remit the case to the court which made the order for the purpose of taking any further evidence, the court may so remit the case and adjourn the proceedings for the purpose.

(8) Where an order has been so confirmed, the person bound thereby shall have the same right of appeal, if any, against the confirmation of the order as he would have had against

the making of the order had the order been an order made by the court confirming the order.

17. Transmission of maintenance order for registration abroad

Where a court has made a maintenance order against any person and it appears to the court that he is resident in a country to which this Part applies the court shall, at the request of the applicant for the order, send a certified copy of the order to the Minister for transmission to the appropriate authority in that country for the purpose of being registered in that country.

18. Making of provisional order against person resident abroad

(1) Where-

- (a) an application has been made to a magistrate's court for a maintenance order against any person; and
- (b) that person does not appear at the hearing; and
- (c) it appears to the court that he is resident in a country to which this Part applies and the court is not satisfied that the summons has been duly served upon him,

the court may upon hearing evidence make such order as it might have made if the summons had been duly served on that person and he had failed to appear at the hearing but in such case the order shall be provisional only and shall not have effect unless confirmed by a competent court in that country.

(2) The evidence of each witness shall be put into writing and the deposition shall be read over to and signed by him.

(3) The court shall send to the Minister for transmission to the appropriate authority in the said country a certified copy of the order, together with the depositions and a statement of the grounds on which the making of the order might have been opposed if the person against whom the order is made had been duly served with a summons and had appeared at the hearing, and such information as the court possesses for facilitating the identification of that person and ascertaining his whereabouts.

(4) Where the order has come before a court in the said country for confirmation, and has been remitted to the court which made the order for the purpose of taking further evidence, that court shall, after giving the prescribed notice, proceed to take the evidence in the like manner and subject to like conditions as the evidence in support of the original application.

(5) If upon the hearing of the evidence it appears to the court that the order ought not to have been made, the court may rescind the order, but in any other case the depositions shall be sent to the Minister and dealt with in like manner as the original depositions.

(6) The confirmation of an order made under this section shall not affect any power of a court to vary or rescind that order.

(7) On the making of a varying or rescinding order the court shall send a certified copy thereof to the Minister for transmission to the appropriate authority aforesaid, and in the case of an order varying the original order the order shall not have any effect unless confirmed in like manner as the original order.

(8) The applicant shall have the same right of appeal, if any, against a refusal to make a provisional order as he would have had against a refusal to make the order had a summons been duly served on the person against whom the order is sought to be made.

19. Communications between courts

The Minister may by statutory instrument provide for the manner in which a case can be remitted by a court authorized to confirm a provisional order to the court which made the provisional order, and generally for facilitating communications between such courts.

20. Mode of enforcing orders

(1) A court in which an order has been registered under this Part or by which an order has been confirmed under this Part, shall take all such steps for enforcing the order as may be prescribed.

(2) Every such order shall be enforceable in the same manner as a decree for the payment of money by instalments or in such other manner as may be prescribed.

(3) A warrant of distress or commitment issued by a magistrate's court for the purpose of enforcing any order so registered or confirmed may be executed in any part of the Republic in the same manner as if the warrant had been originally issued or subsequently endorsed by a magistrate's court having jurisdiction in the place where the warrant is executed.

21. Proof of documents signed by officers of foreign court

Any document purporting to be signed by a judge or officer of a court in a country to which this Part applies shall, until the contrary is proved, be deemed to have been so signed without proof of the signature or judicial or official character of the person appearing to have signed it, and the officer of a court by whom a document is signed shall, until the contrary is proved, be deemed to have been the proper officer of the court to sign the document.

22. Depositions to be evidence

Depositions taken for the purpose of this Part in a court in a country to which this Part applies may be received in evidence in proceedings before a court under this Part.