

Courts Act 1999

Act 459

[...]

Section 54 – Choice of Law

- (1) Subject to this Act and any other enactment, a court when determining the law applicable to an issue arising out of any transaction or situation, shall be guided by the following rules in which references to the personal law of a person are references to the system of customary law to which he is subject or to the common law where he is not subject to any system of customary law:

Rule 1. An issue arising out of a transaction shall be determined according to the system of law intended by the parties to the transaction to govern the issue or the system of law which the parties may, from the nature or form of the transaction be taken to have intended to govern the issue.

Rule 2. In the absence of any intention to the contrary, the law applicable to any issue arising out of the devolution of a person's estate shall be the personal law of that person.

Rule 3. In the absence of any intention to the contrary, the law applicable to an issue as to title between persons who trace their claims from one person or group of persons or from different persons all having the same personal law, shall be the personal law of that person or those persons.

Rule 4. In applying Rules 2 and 3 to disputes relating to titles to land, due regard shall be had to any overriding provisions of the law of the place in which the land is situated.

Rule 5. Subject to Rules 1 to 4, the law applicable to any issue arising between two or more persons shall, where they are subject to the same personal law, be that law; and where they are not subject to the same personal law, the court shall apply the relevant rules of their different systems of personal law to achieve a result that conforms with natural justice, equity and good conscience.

Rule 6. In determining an issue to which the preceding Rules do not apply, the court shall apply such principles of the common law, or customary law, or both, as will do substantial justice between the parties, having regard to equity and good conscience.

Rule 7. Subject to any directions that the Supreme Court may give in exercise of its powers under Article 132 of the Constitution, in the determination of any issue arising from the common law or customary law, the court may adopt, develop and apply such remedies from any system of law (whether Ghanaian or non-Ghanaian) as appear to the court to be efficacious and to meet the requirements of justice, equity and good conscience.

- (2) Subject to this Act and any other enactment, the rules of law and evidence (including the rules of private international law) that have before the coming into force of this Act been applicable in proceedings in Ghana shall continue to apply, without prejudice to any development of the rules which may occur.

[...]

Part V – Enforcement in Ghana of Foreign Judgments and Maintenance Orders

Sub-Part I – Foreign Judgments

Section 81 – Application of Sub-Part I

(1)

Where the President is satisfied that, in the event of the benefits conferred by this Sub-Part being extended to judgments given in the superior courts of any country, substantial reciprocity of treatment will be assured in respect of the enforcement in that country of judgments given in the Superior Court of Judicature of Ghana, the President may by legislative instrument order:

(a) that this Sub-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 Sub-Part.

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

(a) it is final and conclusive between the parties; and

(b) there is payable under it a sum of money, not being a sum payable in respect of taxes or other charges of a similar 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 Sub- part shall extend to that country.

(3) For the purpose 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.

Section 82 – Registration of Judgment

(1) A judgment creditor under a judgment to which this Sub-Part applies may apply to the High Court to have the judgment registered.

(2) The application for registration of the judgment shall be made within six years after the date of judgment or where there has been an appeal, after the last judgment given in those proceedings.

(3) The High Court may order the judgment to be registered subject to proof of the prescribed matters and to the provisions of the Sub-Part.

(4) 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.

(5) Subject to the provisions of this Sub-Part with respect to the setting aside of a 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.

(6) Execution shall not issue on the judgment under this Sub-Part or any rules of court made in pursuance of it, so long as 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.

(7) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of Ghana the judgment shall be registered as if it were a judgment for a sum in the currency of Ghana based on the rate of bank exchange prevailing at the date of the judgment of the original court.

(8) 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.

(9) 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 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 judgment may be registered in respect of those that could be registered but not in respect of any other provisions contained in it.

(10) In addition to the sum of money payable under the judgment of the original court and any interest due up to the time of registration by the law of the country of the original court, the following costs shall also be paid:

- (a) reasonable costs of and incidental to registration of the judgment; and
- (b) costs of obtaining a certified copy of the judgment from the original court.

Section 83 – Instances when Registered Judgments shall or may be Set Aside

(1) On an application made by a party against whom a registered judgments 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 Sub-Part applies or was registered in contravention of this Sub-Part; or
- (ii) that the original court had no jurisdiction in the case; or
- (iii) that the judgment debtor, being the defendant in the 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; or
- (iv) that the judgment was obtained by fraud; or
- (v) that the enforcement of the judgment would be contrary to public policy in Ghana; 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 prior to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court that had jurisdiction in the matter.

(2) For the purpose of this section the original court shall, subject to subsection

(3) of this section be deemed to have had jurisdiction:

(a) in the case of a judgment given in an action in persona:

- (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 proceeding or of contesting the jurisdiction of that court; or

(ii) if the judgment debtor was plaintiff in or counter-claimed in the proceedings in the original court; or

(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 that country; or

(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 situated in the country of that court; or

(c) in the case of a judgment given in an action other than an action in (a) or (b) of this subsection, if the jurisdiction of the original court is recognized by the law of the registering court.

(4) Notwithstanding anything in subsection (2) of this section, 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; or

(b) except as provided in sub-paragraphs (i), (ii) and (iii) of paragraph (a) and paragraph (c) of subsection (2) of this section, if bringing 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.

Section 84 – Powers of Registering Court on Application to set Aside Registration

(1) If the applicant on an application to set aside the registration of a judgment satisfies the registering court that:

(a) an appeal is pending; or

(b) he is entitled and intends to appeal, the court may set aside the registration or adjourn the application until the expiry of such time as the court considers necessary to enable the applicant to have the appeal disposed of by a competent tribunal.

(2) Where the registration of a judgment is set aside under subsection (1) of this section 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 when the judgment becomes enforceable by execution in the country of the original court.

(3) Where the registration of a judgment is set aside because the judgment was registered for the whole sum payable under it, even though at the date of application for the registration of the judgment it had been partly satisfied, the registering court shall order judgment to be registered for the outstanding balance payable at the date of the application by the judgment creditor.

Section 85 – 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 Sub-Part applies other than proceedings by way of registration of the judgment, shall be entertained by any court in Ghana.

Section 86 – General Effect of Certain Foreign Judgments

(1) Subject to this section, a judgment to which this Sub-Part applies or would have applied if a sum of money had been payable under it, shall be recognized in any court in Ghana as conclusive between the parties to it in all proceedings founded on the same cause of action and may be relied upon as a defence or counterclaim in any such proceedings.

(2) Subsection (1) shall apply whether the judgment can be registered, is registered or is not registered.

(3) This section shall not apply in the case of any judgment:

(a) Where the judgment has been registered and the registration has been set aside on some ground other than:

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied; or

(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 and it is shown (whether it could have been registered or not) that if it had been registered, the registration would have been set aside on application on some ground other than those specified in paragraph (a) of this subsection.

Section 87 – Power to make Foreign Judgments Unenforceable in Ghana if no Reciprocity

If it appears to the President that the treatment in respect of recognition and enforcement accorded by the court of any country to judgments given in the Superior Courts of Ghana is substantially less favourable than that accorded by the courts of Ghana to judgments of the superior courts of that country, the President may by legislative instrument order that no proceedings shall be entertained in any court in Ghana for the recovery of any sum alleged to be payable under a judgment given in a court of that country.

Section 88 – Issue of Certificates of Judgments Obtained in Ghana

(1) Where a judgment for a sum of money which is not for taxes or similar charges or is not a fine or other penalty is entered by the High Court against any person, and the judgment creditor wants to enforce the judgments in a country to which this Sub-Part applies, he may apply to the court in Ghana to issue to the judgment creditor a certified copy of the judgment, together with a certificate containing such particulars with respect to the

action, including the cause of action, and the rate of interest, if any, payable on the sum under the judgment as may be prescribed by the court that gave the judgment.

- (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.

Sub-Part II – Maintenance Orders

Section 89 – Application of Sub-Part II

(1) This Sub-Part shall apply to any country in respect of which the President, having regard to reciprocal provisions under the law of that country, may by legislative instrument direct the application of this Sub-Part.

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

Section 90 – Registration of Foreign Maintenance Orders

(1) A maintenance order made in a country to which this Sub-Part applies may be registered in the appropriate court in the prescribed manner and shall 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 Sub-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 the Community Tribunal.

(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.

Section 91 – Confirmation of Foreign Provisional Order

(1) Where a maintenance order has been made in a country to which this Sub-Part applies and by the law of that country the order is provisional only unless confirmed by a court in Ghana the provisions of this section shall apply.

(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 him that the person against whom the order was made is resident in Ghana the Minister may send the documents to any Community Tribunal with a requisition that summons be issued calling upon the person to show cause why the order should not be confirmed, and the court shall issue the 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 with jurisdiction in the place where the persons happens to be.

(4) At the hearing it shall be open to the person on whom the summons was served to state that he was not a party at the hearing and to raise any defence which he might have raised in the original proceedings had he been a party to it, 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 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 to take further evidence, the court may remit the case and adjourn the proceedings for that 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 to take further evidence, the court may so remit the case and adjourn the proceedings for that purpose.

(8) Where an order has been confirmed under this Sub-Part it shall have the same effect as if it were an order made by the court which confirmed it.

Section 92 – Transmission of Maintenance Order for Registration Abroad

Where a court has made a maintenance order against a person and it appears to the court that he is resident in a country to which this Sub-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 order to be registered in that country.

Section 93 – Making of Provisional Order Against Persons Resident Abroad

(1) Where:

(a) an application has been made to a Community Tribunal for a maintenance order against any person; and

(b) that person does not appear at the hearing; and

(c) it appears to the Tribunal that he is resident in a county to which this Sub- Part applies and the Tribunal is not satisfied that the summons had been duly served upon him, the Tribunal may upon hearing the 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 that case the order shall be provisional 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 to him and signed by him.

(3) The court shall send to the Minister for transmission to the appropriate authority in the foreign country, a certified copy of the order 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 was made had been duly served with a summons and had appeared at the hearing, and such other information as the court may possess to facilitate the identification of that person and ascertaining his whereabouts.

(4) Where the order has come before a court in the foreign 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 same manner and subject to the same 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 the same 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 of it to the Minister for transmission to the appropriate authority and in the case of an order varying the original order the order shall not have any effect unless and until confirmed in the same 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 summons been duly served on the person against whom the order is sought to be made.

Section 94 – Communications between Courts

The Minister may by legislative 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 the courts.

Section 95 – Mode of Enforcing Orders

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

(2) Every 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 committal issued by a Community Tribunal for the purpose of enforcing any order registered or confirmed may be executed in any part of Ghana in the same manner as if the warrant had been originally issued or subsequently endorsed by a Community Tribunal having jurisdiction in the place where the warrant is executed.

Section 96 – 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 Sub-Part applies shall, until the contrary is proved, be deemed to have been 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 be deemed to have been the proper officer of the court to sign the document until the contrary is proved.

Section 97 – Depositions to be Evidence

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

Sub-Part III – General Provisions Relating to this Part

Section 98 – Rules of Court to be Made in Respect of this Part

(1) The Rules of Court Committee may make rules of court:

- (a) for the giving of security for costs by persons applying for the registration of judgments;
- (b) for matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;
- (c) for the service on the judgment debtor of notice of the registration of a judgment;
- (d) for fixing of a period within which an application may be made to have the registration of the judgment set aside and the extension of the period fixed;
- (e) for the method by which issues arising under this Part for the enforcement of a foreign judgment 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 are 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 in their application to proceedings under Sub-Part I of this Part have effect subject to the provisions of any order made under section 89 of this Act.

Section 99 – Interpretation of this Part

(1) In this Part of this Act unless the context otherwise requires:

‘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;

‘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;

‘country of the original court’ means the country in which the original court is situated;

‘court’ includes a Community Tribunal; ‘dependants’ means such individuals as a person is liable to maintain according to the law in force in the country in which the maintenance order was made;

‘judgment’ means a judgment or order given or made by a court in any civil proceedings or 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;

‘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, assignment or otherwise;

‘judgment debtor’ means the person against whom the judgment is enforceable under the law of the original court;

‘judgment given in the High Court’ includes judgment given on appeal against that judgment;

‘maintenance order’ means an order, other than an order of affiliation, for the periodic 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;

‘original court’ in relation to a Judgment means the court which gave the judgment;

‘prescribed’ means prescribed by rules of court; ‘registration’ means registration under this Part; ‘registering court’ in relation to any judgment, means the Court to which an application to register the judgment is made;

‘the Minister’ means the Minister responsible for Justice.

(2) For the purpose of this Part, ‘action in persona’ shall not include any matrimonial cause or any proceedings in connection with matrimonial matters, administration of the estates of deceased persons, insolvency, winding up of companies, lunacy or guardianship of infants.

(This Part applies to a maintenance order whether made before or after the commencement of this Act).