

ENFORCEMENT OF FOREIGN CIVIL JUDGMENTS ACT 28 OF 1994

[ASSENTED TO 16 NOVEMBER 1994] [DATE OF COMMENCEMENT: 29 NOVEMBER 1994]

(Signed by the President)

as amended by

International Co-operation in Criminal Matters Act 9 of 2000

ACT

To provide that civil judgments granted in designated countries may be enforced in magistrates' courts in Namibia; to repeal the Reciprocal Enforcement of Civil Judgments Act, 1966;

and to provide for matters incidental thereto.

ARRANGEMENT OF SECTIONS

- 1 Definitions
- 2 Application of Act
- 3 Registration of judgments granted in designated countries
- 4 Effect of registration of judgment, and execution
- 5 Setting aside of registered judgment
- 6 Stay of execution of judgment
- 7 Presumptions
- 8 Removal of assets prohibited
- 9 Savings
- 10 Rules
- 11 Repeal of laws
- 12 Short title

1 Definitions

In this Act, unless the context otherwise indicates-

"certified copy", in relation to a judgment, means a copy certified by the proper officer of the court of a designated country to be a true copy;

"court", in relation to the court of a designated country, means the Supreme or High Court or any magistrate's court (including a regional court) of that country and, in relation to a court in Namibia, means the magistrate's court of the district where-

(a) the person against whom a judgment in question was granted-

(i) resides, carries on business or is employed; or

(ii) owns any movable or immovable property;

(b) any juristic person against which the judgment was granted has its registered office or its principal place of business; or

(c) any partnership against which the judgment was granted has its business premises or any member of such partnership resides;

"designated country" means a country declared as a designated country under section 2(a);

"judgment" means any final judgment or order for the payment of money, given or made before or after the commencement of this Act by any court in any civil proceedings, and which is enforceable by execution in the country in which it was given or made, but does not include any judgment or order given or made by any court on appeal from a judgment or order of a court other

than a court as defined in this Act, or for the payment of any tax or charge of a like nature or of any fine or other penalty, or for the periodical payment of sums of money towards the maintenance of any person;

[Definition of "judgment" substituted by sec 35 of Act 9 of 2000.]

"judgment creditor" means the person in favour of whom the judgment was granted, including any other person in whom rights under the judgment have become vested;

"judgment debtor" means the person against whom a judgment was granted in the court of a designated country, including any person against whom such judgment is enforceable under the law of the designated country;

"Minister" means the Minister of Justice;

"prescribed" means prescribed by the rules referred to in section 25 of the Magistrates' Courts Act, 1944 (Act 32 of 1944), read with section 10 of this Act;

"proceedings" means the proceedings in which the judgment was granted.

2 Designation of countries for purposes of this Act

The Minister may, by notice in the Gazette-

- (a) for the purposes of this Act declare as a designated country, any country with which Namibia has in terms of the Namibian Constitution entered into an agreement providing for the reciprocal enforcement of foreign civil judgments; and
- (b) withdraw any such declaration.

3 Registration of judgments granted in designated countries

(1) Whenever a certified copy of a judgment granted against any person by any court in a designated country is lodged with a clerk of the court in Namibia, such clerk of the court shall register such judgment in the prescribed manner in respect of-

- (a) the balance of the amount payable in terms of such judgment, including the taxed costs awarded by the court of the designated country;
- (b) the interests, if any, which by law or by order of the court of the designated country concerned is due on the amount payable in terms of such judgment up to the time of such registration; or
- (c) the reasonable costs of and incidental to such registration, including the costs of obtaining a certified copy of the judgment.

(2) The clerk of the court registering a judgment in terms of subsection (1) shall forthwith issue a notice directed to the judgment debtor concerned, informing him or her of such registration.

(3) The notice referred to in subsection (2) shall be served on the judgment debtor by the Messenger of the Court in the manner prescribed for the service of process.

(4) If any amount payable under a judgment registered in terms of subsection (1) is expressed in a currency other than the currency of Namibia, the judgment shall be registered as if it were a judgment for such amount in the currency of Namibia, calculated at the opening rate of exchange on the date of such registration, as advised by the Bank of Namibia.

(5) The amounts referred to in subsection (1)(a) and (c) shall, subject to the provisions of section 2(1) of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), bear interest from the

date of registration of the judgment in terms of subsection (1) until the date of payment of such amounts, calculated at the rate prescribed under section 1(2) of that Act, or at the rate determined by the court of the designated country which granted such judgment, whichever rate is the lower.

4 Effect of registration of judgment and execution

(1) Whenever a judgment has been registered in terms of section 3(1), such judgment shall have the same effect as a civil judgment of the court at which such judgment has been so registered.

(2) Notwithstanding anything to the contrary in this section or in any other law contained, a judgment registered in terms of section 3(1) shall not be executed before the expiration of 21 days after service in accordance with section 3(3) of the notice referred to in section 3(2), or until an application in terms of section 5 has been finally disposed of.

5 Setting aside of registered judgment

(1) The registration of a judgment in terms of section 3(1) shall, on the application of the judgment debtor in the prescribed form and manner, be set aside if the court at which such judgment is registered is satisfied-

(a) that the judgment was registered in contravention of any provision of this Act;

(b) that the court of the designated country concerned had no jurisdiction in the circumstances of the case;

(c) that the judgment debtor did not receive notice of the proceedings in which the judgment was granted, as prescribed by the law of the designated country, or, if no such notice is so prescribed, that he or she did not receive reasonable notice of the said proceedings to enable him or her to defend the proceedings, and did not appear;

(d) that the judgment was obtained by fraud;

(e) that the enforcement of the judgment would be contrary to public policy in Namibia;

(f) that the certified copy of the judgment lodged in terms of section 3 was so lodged at the request of a person other than the judgment creditor;

(g) that the matter in dispute in the proceedings had, prior to the date of the judgment, been the subject of a final judgment by a court of competent jurisdiction in civil proceedings before such court;

(h) that the judgment has been set aside by a court of competent jurisdiction;

(i) that the judgment has become prescribed under either the laws of Namibia or of the designated country concerned;

(j) that the judgment has been wholly satisfied;

(k) that the judgment has been partly satisfied, to the extent in which it has been so satisfied; or

(l) that the judgment is a judgment or order which in terms of any law may not be recognized or enforced in Namibia.

(2) An application under subsection (1) shall be brought within 21 days after service in accordance with section 3(3) of the notice referred to in section 3(2).

(3) The court hearing an application under subsection (1) may at any time postpone the hearing of the application to such date as it may determine.

6 Stay of execution of judgment

If, on the application of any judgment debtor, the court at which the judgment is registered in terms of section 3(1), is satisfied that an appeal against the judgment is pending in a court of competent jurisdiction or that the applicant is entitled and intends to appeal against the judgment of a court of competent jurisdiction, it may on such conditions and for such period as it may deem appropriate, suspend the execution of the judgment.

7 Presumptions

(1) A judgment shall be deemed to be a final judgment notwithstanding that an appeal against such judgment is pending in a court of the designated country or that the time prescribed by the law of such country for appealing against such judgment has not expired.

(2) A document purporting to be a copy of a judgment of a court in a designated country, and purporting to be certified as a true copy of an original judgment of that court by someone styled in that document to be a registrar or a clerk of such court, shall be admissible in evidence in any proceedings under any of the provisions of this Act, and shall be prima facie proof of the contents of such document.

(3) Any document admissible under subsection (2), or any document which would have been admissible under any other law if made or attested within Namibia, need not be authenticated and shall be admissible as if such document has been made or attested within Namibia.

(4) Subject to the provisions of subsection (5), the court of the designated country in which the judgment was given shall, for the purpose of section 5, be deemed to have had jurisdiction-

(a) if the judgment debtor-

(i) was the plaintiff or plaintiff in reconvention in the proceedings or submitted to the jurisdiction of the court by which the judgment was granted by voluntarily appearing in the proceedings for any purpose other than protecting or obtaining the release of property seized or threatened with seizure in the proceedings or contesting the jurisdiction of such court;

(ii) was a defendant in the proceedings before such court and had, before the commencement of the proceedings, in writing agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of any court of the designated country; or

(iii) was a defendant in the proceedings before such court and, at the institution of the proceedings, resident in, or being a juristic person, had its registered office or principal place of business in, such designated country, or at any time had an office or place of business in such

designated country through or at which the transaction to which the proceedings relate, was effected;

(b) if, in any action relating to immovable property, the property was at the institution of the proceedings situate in the designated country in which the proceedings were instituted;

(c) if, in any proceedings other than proceedings referred to in paragraph (a) or (b), the jurisdiction of the court by which the judgment was granted is recognized by the law of Namibia.

(5) The court of the designated country in which the judgment was granted shall, for the purposes of section 5, be deemed not to have had jurisdiction-

(a) in proceedings relating to immovable property situated outside such designated country;

(b) except in the cases referred to in subparagraphs (i) and (ii) of subsection (4)(a), in proceedings instituted in contravention of an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of such designated country; or

(c) in proceedings in which the person against whom the judgment was granted was under the rules of public international law entitled to immunity from jurisdiction of the courts of such designated country and did not submit to such jurisdiction.

8 Removal of assets prohibited

A notice issued under section 3(2) shall operate as an interdict against the judgment debtor on whom it was served, and against any person having knowledge of such notice, not to remove or

dispose of any assets of the judgment debtor if such removal or disposal would prejudice the execution of the judgment.

9 Savings

Nothing in this Act contained shall be construed as preventing any court in Namibia from recognizing, for the purposes of any claim, defence or counter-claim, any judgment (other than a judgment the registration of which has been set aside under section 5) granted by any court of competent jurisdiction outside Namibia in any civil matter, as conclusive of any matter of law or of fact decided in such judgment if such judgment could, before the commencement of this Act, have been so recognized by such court.

10 Rules

Any power to make rules under section 25 of the Magistrates' Court Act, 1944 (Act 32 of 1944) shall be deemed to include the power to make rules prescribing any matter which may in terms of this Act be prescribed or which is necessary or expedient to be prescribed to give effect to the provisions of this Act.

11 Repeal of laws

The Reciprocal Enforcement of Civil Judgments Act, 1966 (Act 9 of 1966) is hereby repealed.

12 Short title

This Act shall be called the Enforcement of Foreign Civil Judgments Act, 1994.