THE EASTERN CARIBBEAN SUPREME COURT

IN THE COURT OF APPEAL

ANTIGUA AND BARBUDA

ANUHCVAP 2015/0018

ANUHCVAP 2015/0019

BETWEEN:

ROBIN KENSWORTH MONTGOMERY YEARWOOD

Appellant/Counter-Appellant

and

CHRISTIANA YEARWOOD

Respondent/Counter-Appellant

Before:

The Hon. Mr. Davidson Kelvin Baptiste, Justice of Appeal
The Hon. Mde. Louise Blenman, Justice of Appeal
The Hon. Mr. Reginald Amour, SC., Justice of Appeal, [Ag.]

Appearances

David Joseph, QC with him Ms. Andrea Smithen for the Appellant
Dr. David Dorsett with him Mr. Jarid Hewlett for Respondent

2017: February 27;
November 21

Civil appeal – Consolidated appeals – Family proceedings – Rights to reciprocal enforcement of foreign monetary judgments under section 3(1) of the Reciprocal Enforcement of Judgments Act, Cap. 369 of the Revised laws of Antigua and Barbuda 1992 – Whether the learned judge erred in ruling that there was power to register the foreign judgment in family proceedings outside of the jurisdiction in accordance with Part 72 of the Civil Procedure Rules ("CPR 2000") – Power of the Court to enforce foreign judgments – Whether the delay in filing the default costs certificate for enforcement of judgment amounts to inability to pursue enforcement of foreign monetary judgment– Estoppel – Res judicata – Rules 2.2 (3) and Part 72 of the Civil Procedure Rules 2000.

The decree absolute was issued by the High Court of England on 18th December 2009, dissolving the marriage of Robin Yearwood, the appellant and Christiana Yearwood, the counter-appellant. Prior to this, Christiana Yearwood applied for financial provision and property adjustment orders. An order was granted by Phillip Moor, QC, Deputy High Court

Judge, Family Division on 7th December 2009 ('the 7th December Order") awarding a lump sum of £4,121,000.00 ("the lump sum"). Thereafter, on 10th May 2010 the learned Deputy Judge made a further order ("the 10th May UK Order"), ex parte for Robin Yearwood to pay the outstanding lump sum balance of £3,144,456.80 from the said 10th May UK Order. The proceedings which led to these appeals commenced on 31st May 2010, whereby Christiana Yearwood applied to the High Court of Justice, Eastern Caribbean Supreme Court to have the prior order, that is the 10th May UK Order registered pursuant to the Reciprocal Enforcement of Judgments Act, Cap. 369, Revised Laws of Antigua and Barbuda 1992 ("the Act"). On 8th December 2011, Michel J set aside his previous ruling to allow the registration of the 10th May UK Order, previously applied for by Christiana Yearwood on the said 31th May 2010. On 12th November 2010, Christiana Yearwood was granted a default costs certificate in the United Kingdom to certify costs payable in the original action against Robin Yearwood amounting to £592,602.33 with interest commencing on the 7th December, 2009. Additionally, based on the inter parte application of Christiana Yearwood on 9th July 2012, the learned Moor J, QC made a further order discharging the 10th May UK Order and, setting out the monies due to Christiana Yearwood pursuant to 7th December Order totalling the sum of £1,882,851 (together both referred to as "the further order").

On 27th June, 2013, Christiana Yearwood applied to register the Default Costs Certificate of 12th November 2010, and, the further order (together both referred to as the "2013 registration application"), additionally, seeking the costs of the 2013 registration. On 24th July 2013 , Robin Yearwood sought the declaratory relief to disentitle Christiana Yearwood from registering any judgments, orders or directives resulting from the UK proceedings, Claim No. FD08D00763, as well as an injunction to restrain the registration of any such judgment, order or directives, in addition to damages and costs of this action. Further, Robin Yearwood applied for summary judgment under the Civil Procedure Rules 2000 ("CPR 2000") purporting that Christiana Yearwood's defence has no real prospect of success as the issues in contention were previously decided by Michel J in judgment dated 8th December 2011, on the basis of the application of the doctrines of estoppel and res judicata and, alleging abuse of process by Christiana Yearwood.

Henry J heard and dismissed the summary judgment application of Robin Yearwood and found that although Part 72 of the CPR did not govern the registration of foreign judgments under the Act, it did not exclude the registration of money judgments obtained in family proceedings. In addition, Henry J ruled that the prior decision of Michel J did not provide a basis for the application of the principles of res judicata or estoppel nor abuse of process.

Further, the learned Henry J heard and found in favour of Christiana Yearwood by granting part of the application for the 2013 registration of the further order under the Act, however refusing registration of the default costs certificate. Henry J found that the certificate issued on 12th November 2010 and the application were outside the time limit specified by section 3(1) of the Act and could not be registered within the jurisdiction of Antigua and Barbuda.

Both parties, dissatisfied with the decisions of Henry J dated 1st June 2015 appealed to this Court.

Held: dismissing the appeal and allowing the counter-appeal, with costs of both here and below to be assessed if not agreed, that:

1. It is more a proper construction exercise in reference to primary and secondary legislation that, the rule (or indeed the absence of prescribed rules) may not limit the amplitude of the statute. The **Reciprocal Enforcement of Judgments Act, Cap. 369, Revised Laws of Antigua and Barbuda** permits that where the final adjudication of debt has been given, an obligation then exists which cannot thereafter in that court be disputed. Ergo, a foreign judgment is capable of registration in a local court and gives credit to that judgment through its enforcement by virtue of section 9(1) of the **UK Administration of Justice Act 1920** ("AJA 1920") subject only to the limitations expressly outlined by section 9(2).

   Nouvion v Freeman (1889) 15 App. Cas. applied.

2. Sections 9(1) and 9(2)(a) – (e) of the **UK Administration of Justice Act 1920** are ingrained to sections 3(1) and 3(2)(a) – (e) of the **Reciprocal Enforcement of Judgments Act, Cap. 369, Revised Laws of Antigua and Barbuda** to demonstrate that the Act and AJA 1920 are to be construed and applied in tandem to facilitate the registration of foreign judgments. A judgment obtained by a party whereby a sum of money is payable in civil proceedings falls within the definition of "judgment" in section 2(1) of the Act, properly construed and applies to a judgment for lump sums finally adjudged as due and owing in family proceedings. In the case at bar, Robin Yearwood argued that the learned judge erred in law by permitting the registration of the further order under the Act, despite the CPR's express inapplicability to family proceedings; (b) further, the Act was not intended to allow for the registration of judgments in family proceedings; (c) the judgment which was permitted to be registered was outside of the time limit provided by section 3(1) of the Act; and that (d) the learned judge erred by incorrectly refusing to dismiss Christiana Yearwood's application on the grounds of issue estoppel/abuse of process. The learned judge was correct to dismiss Robin Yearwood's motion on this basis as the argument was without merit, as such, the Act should be ordinarily and naturally applied to a judgment or order obtained in family proceedings within the ambit of civil action.

   Owens Banks Ltd. v Bracco [1992] 2 A.C 443 applied; **Beatty v Beatty [1924]** All ER 314 applied.

3. In determining whether the delay in filing the default costs certificate for enforcement of judgment amounts to inability to pursue enforcement of a monetary judgment, much will turn on the wording of the Act. In the case at bar, nothing in the wording of the Act would allow for the time limit prescribed for which Robin

Yearwood submits. The phrase "any civil proceedings" is consistent with the definition of "judgment" under section 2(1) of the Act therefore capable of registration. Further, section 3(1) of the Act permits the local court to allow for a longer period once it considers it just and convenient in all the circumstances that the judgment should be enforced in Antigua and Barbuda. The court retains discretion on the true construction of the Act as a whole to permit the registration nonetheless. The learned judge erred in her judgment in refusing to allow the registration of the default costs certificate as she failed to direct her mind to the question of whether an extension of time was just and convenient having regard to all the circumstances thereby exercising judicial discretion. It is clear that the learned judge erred by failing to consider relevant and material circumstances for the inordinate delay and as such this ground of appeal is allowed and Christiana Yearwood's 2013 registration application of the further order under the Act and registration of the Default Costs Certificate previously issued on 12th November 2010 as enforcement of said further order is granted.

Quinn v Pres-T-Con Limited [1986] 1 WLR 1216 applied.

JUDGMENT

Introduction

[1] **ARMOUR JA** [**AG**]: This appeal arises from the decision of Henry J dated 17th April 2015 in respect of two related matters, both appealed, one being an application by Ms. Christiana Yearwood (hereinafter referred to as "the wife") in ANUHCV2013/0422 and the other, a claim for declaratory relief, among other things, brought by Robin Yearwood (hereinafter referred to as "the husband") in ANUHCV2013/0490. An account of the relevant facts common to both matters is stated below.

[2] The marriage of the parties was dissolved by decree nisi on 6th August 2008 by the High Court of England with the decree absolute being issued on 8th December 2009. In UK proceedings, Claim No. FD08D00763, the wife applied for financial provision and property adjustment orders. These were determined by Phillip Moor, QC sitting as a Deputy High Court Judge, Family Division, by order made on 7th December 2009 ("the 7th December Order") with a written judgment ("the judgment") delivered on 5th January, 2010. By 7th December Order the learned Deputy Judge awarded a lump sum to the wife of £4,121,000.00 ("the lump sum").

The lump sum and other awards are detailed at paragraphs 128 and 129 of the judgment. At paragraph 131 of his judgment, the Deputy Judge stated his intention to deal with the structure of the award and costs separately.

[3] On 10th May 2010, Justice Moor, QC thereafter made a further order, ex parte for the husband to pay the balance outstanding of the lump sum, that is, the sum of £3,144,456.80 ("the 10th May UK Order").

[4] By application made in Claim No. ANUHCV2010/0362, the wife applied on 31st May 2010 to the High Court of Justice, Eastern Caribbean Supreme Court to have the 10th May UK Order registered pursuant to the **Reciprocal Enforcement of Judgments Act**,[1] (hereinafter referred to as ("the Act"). After having previously allowed the registration of the 10th May UK Order, the Honourable Mr. Justice Mario Michel J in a written decision dated 8th December, 2011 set aside that registration on the husband's application. He held that (a) the 10th May UK Order could not be registered under the Act as section 3(2)(c) precluded registration where the husband had not been served with the application resulting in that 10th May UK Order; and that (b) the **Civil Procedure Rules** ("CPR 2000") and in particular Part 72 under which the application had been brought did not apply to orders made in family proceedings.

[5] Meanwhile, the Senior Courts Costs Office in England had issued a default costs certificate on 12th November 2010 certifying that the costs payable to the wife by the husband on the original action was the sum of £592,602.33 with interest commencing on 7th December 2009. Further, on 9th July 2012, on application made by the wife on notice to the husband, Justice Moor, QC made a further order (a) discharging the 10th May UK Order and, (b) setting out the moneys due to the wife by the husband pursuant the 7th December Order as being the sum of £1,882,851.00 (together both referred to as "the further order").

[1] Cap. 369, Revised Laws of Antigua and Barbuda 1992.

[6] On 27th June 2013, the wife brought Application No. ANUHCV2013/0422 by which she applied, pursuant to the Act, to register the default costs certificate issued on 12th November 2010 and, the further order (together both referred to as the "2013 registration application"). She also sought the costs of that 2013 registration application.

[7] The husband, for his part, immediately commenced ANUHCV2013/0490 on 24th July 2013, seeking a declaration that the wife is not entitled to register any judgments, orders or directives emanating out of Family Division Claim No. FD08D00763. The husband also sought an injunction to restrain the wife from seeking the registration of any such judgment, order or directives, as well as damages and costs of his action. Subsequent to the filing of the wife's defence the husband next brought an application for summary judgment under the CPR 2000, contending that the wife has no real prospect of success as the issues in contention had already been decided by Michel J in ANUHCV2010/0362, on the basis of the application of the doctrines of estoppel and res judicata and, alleging abuse of process by the wife.

[8] Both the wife's 2013 registration application and the husband's summary judgment application came before the Honourable Mrs. Justice Clare Henry. In her judgment Henry J first dealt with the husband's summary judgment application and next with the wife's 2013 registration application. She found in favour of the wife in dismissing the husband's summary judgment application and granting part of the wife's 2013 registration application.

[9] On the summary judgment application, Henry J found that whilst Part 72 of the CPR 2000 did not apply to govern registration of foreign judgments under the Act, nothing in the Act excluded the registration of money judgments obtained in family proceedings; the learned judge also found that the prior decision of Michel J did not provide a basis for the application of the principles of res judicata or estoppel and that there was no abuse of process on the part of the wife.

[10] On the wife's 2013 registration application she allowed that part of the 2013 registration application granting registration of the further order under the Act; she however refused registration of the Default Costs Certificate on the ground that, the latter having been issued on 12th November 2010 the application was outside the time limit specified by section 3(1) of the Act and therefore could not be registered within the jurisdiction of Antigua and Barbuda.

[11] Both parties have appealed the decision of Henry J. The husband has appealed on the grounds, in summary that: (a) the learned judge erred in law by permitting the registration of the further order under the Act despite the CPR 2000 expressly being inapplicable to family proceedings; (b) that, in any event, the Act was not intended to allow for the registration of judgments in family proceedings; (c) the judgment which was permitted to be registered was outside of the time limit provided by section 3(1) of the Act; and that (d) the learned judge erred by incorrectly refusing to dismiss the wife's application on the grounds of issue estoppel/abuse of process.

[12] The wife, for her part, has counter-appealed from the refusal of Henry J to allow the registration of the default costs certificate, on the ground that the learned judge did not consider whether it was "just and convenient" in all the circumstances as provided for in section 3(1) of the Act to allow for the registration of the Order despite the time limit being exceeded.

The Reciprocal Enforcement of Judgments Act, Cap. 369

[13] For the determination of these appeals, it is useful to appreciate the history and purpose of the Act, taken from Part II of the **UK Administration of Justice Act 1920** ("AJA 1920"), being an Act generally to amend the law with respect to the administration of justice and with respect to the constitution of the Supreme Court, to facilitate the reciprocal enforcement of judgments and awards in the United Kingdom and other parts of the dominions and territories under the protection of

the King and, to regulate fees by, and on the registration of Commissioners for Oaths. It is instructive that under Part I of the AJA 1920, among others, trials of matrimonial causes by Commissioners empowered under **the Supreme Court of Judicature Act 1873** were vested in the Probate, Divorce and Admiralty Division of the High Court, being the new division added to the previous four divisions, namely the old central courts (King's Bench, Common Pleas, Exchequer, and Chancery). In settling the constitution of the Supreme Court, the President of the Probate, Divorce and Admiralty Division of the High Court was accorded rank and precedence next after the Master of the Rolls. The Probate, Divorce and Admiralty Division of the High Court obtained its present name, the Family Division, in 1969.

[14] Both parties have accepted in their submissions that the learning applicable to the Act is that which is applicable to the AJA 1920.

[15] Inter alia, the purpose of the AJA 1920 was to facilitate the reciprocal enforcement of judgments and awards under the 1920 UK legislative scheme. This facilitation was to make the process of the registration of foreign judgments easier, with the expression "judgment"[2] meaning any judgment or order given or made by a court in any civil proceedings whereby any sum of money is made payable. Such judgments are made capable of registration by virtue of section 9(1) of the AJA 1920 subject only to the limitations expressly proscribed by section 9(2).

[16] It is apposite to note here that section 9(2) proscriptions of the AJA 1920 are the only limitations imposed by the statute qualifying or disentitling a judgment creditor's entitlement to registration of her/his judgment under that statute.

[17] The historical lead up to the AJA 1920 is underscored by the House of Lords in **Nouvion v Freeman.**[3] Lord Herschell states the common law position in England as it related to the registration of foreign judgments to be as follows:

---

[2] Section 12(1) of the **Administration of Judice Act, 1920** and section (1) of the Reciprocal Enforcement of Judgments Act.
[3] (1889) 15 App. Cas. 1 at p. 9-10.

> "The principle upon which I think our enforcement of foreign judgments must proceed is this: that in a Court of competent jurisdiction, where according to its established procedure the whole merits of the case were open, at all events, to the parties, however much they may have failed to take advantage of them, or may have waived any of their rights, a final adjudication has been given that a debt or obligation exists which cannot thereafter in that Court be disputed, and can only be questioned in an appeal to a higher tribunal. In such a case it may well be said that giving credit to the Courts of another country we are prepared to take the fact that such adjudication has been made as establishing the existence of the debt or obligation." (emphasis supplied.)

[18] This is instructive. The foreign court adjudication of the debt is final unless appealed; secondly, once the adjudged debt or obligation has been established by a foreign court of competent jurisdiction, it remains only for the local Court to give "credit" to that determination by allowing for the registration/enforcement of that foreign judgment.

[19] The 1992 decision of the House of Lords in **Owens Banks Ltd v Bracco**[4] traces the history of the field of reciprocal enforcement of judgments through the common law, the Sumner Report of 1919 through to the AJA 1920. The House accepts, unanimously that this field of reciprocal enforcement of judgments is now effectively governed by statute.[5] Their Lordships accept also that the Sumner Report recommendation at paragraph 35(a) and (b) of that Report "were in due course directly implemented by section 9(1) and (2)(a) to (e) of ..." [6] the AJA 1920. It is again apposite at this juncture to note that section 9(1) and (2)(a) to (e) of the AJA 1920, (as recommended by the Sumner Report) are directly implemented as part of the laws of Antigua and Barbuda in section 3(1) and (2) (a) to (e) of the Act.

[20] The Act, like the AJA 1920 is therefore to be construed and applied as an enactment designed to facilitate the registration of foreign judgments. The intention of the Parliament of Antigua and Barbuda must therefore be given effect.

---

[4] [1992] 2 A.C. 443.
[5] [1992] 2 A.C. 443, per Lord Bridge of Harwich, p. 489.
[6] Supra, per Lord Bridge of Harwich, p. 488.

That is to say, to permit a judgment creditor the benefit of enforcing an adjudged debt or obligation owed to him by a debtor, provided the requirements of the Act have been satisfied. In obedience to the Act it is therefore only within the express proscriptions of section 3(2) of the Act that this Court may deny a judgment creditor the benefit of the registration of a judgment under the Act.

[21] With this informed and purposive interpretative understanding of the Act in mind, I proceed to examine the grounds of appeal and counter-appeal advanced by the husband and the wife.

The Husband's Appeal
Grounds 1 and 2

[22] These grounds can be dealt with together as they both deal with the application of the Act to judgments obtained in family proceedings. The Act creates a scheme whereby a judgment obtained in the United Kingdom may be enforced in Antigua and Barbuda section 2(1) defines "judgment" in the same terms as section 12(1) of the AJA 1920:

> "any judgment or order given or made by a court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award in proceedings on an 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".

Of note, the definition of "judgment" provided in the Draft Bill proposed by the Sumner Report "to facilitate the reciprocal enforcement of judgments, orders and awards" in the UK and Dominions and appended as Appendix A to that Report is in substantively the same terms.

[23] The husband's first ground of appeal is founded primarily on section 5 of the Act and Parts 2.2 (3) and 72 of the CPR 2000. Section 5 of the Act provides that:

> "Provision may be made by rules of Court for regulating the practice and procedure (including scales of fees and evidence), in respect of proceedings of any kind under this Act."

[24] The husband contends that these "Rules of Court" are to be found in Part 72 of the CPR 2000, itself intituled *"*Reciprocal Enforcement of Judgments*"*. He further contends that Part 2.2 (3) of the CPR 2000 clearly states that the Rules therein do not apply to family proceedings. Therefore, so the husband's argument runs, the CPR 2000 represents the rules of court made under the Act, declare themselves as being inapplicable to family proceedings so that, *ipso facto* a judgment obtained in family proceedings in the United Kingdom may not be registered under the Act.

[25] In my judgment, this ground is without merit for a number of reasons.

[26] The Civil Procedure Rules are a body of Rules of court made by the Chief Justice and two other judges of the Supreme Court pursuant to section 17 of the **West Indies Associated States Supreme Court Order 1967**. Whilst the CPR 2000 does not apply to "family proceedings", Rules of Court cannot override the provisions of statute, and must always be read as subject thereto. Indeed, it is significant that Part 72.1(b) of the CPR 2000 expressly defines "relevant enactment" to mean any enactment in force in a Member State or Territory in question which relates to the reciprocal enforcement of judgments and, Part 72.1(c) of CPR 2000 in turn provides that "This Part is subject to the requirements of any relevant enactment." Therefore, the very Rule of the CPR 2000 upon which the husband grounds his submission in this regard makes it clear that it is to be read as subject to the Act itself. I do not accept the submission for the husband that insofar as the CPR 2000 is made pursuant to section 17 of the **West Indies Associated States Supreme Court Order 1967**, those rules are somehow to be construed as having "legislative force" capable of altering the plain meaning and intendment of the Act.

[27] Nothing in the relevant enactment*,* i.e., the Act nor in its definition of "judgment" proscribes the applicability of the Act to family proceedings. Again, and apposite in this regard, the clear language of the proscriptions in section 3(2) of the Act limit the basis on which a foreign judgment shall not be registered under the Act.

Judgments obtained in family proceedings are not included among those proscriptions.

[28] Recalling the history of the AJA 1920 from whose Part II of the Act is patterned, one recalls that matrimonial causes previously presided over by Commissioners under the **Supreme Court of Judicature Act 1873** were brought under and vested in the plenitude of the jurisdiction of the Probate, Divorce and Admiralty Division of the High Court.

[29] On an informed interpretation and purposive construction of the Act as a whole, patterned as it is after the AJA 1920, I see no basis on which to construe the phraseology "any judgment or order obtained in civil proceedings" in section 2 (1) of the Act so as to exclude family proceedings. In my view, thus approached and applying the ordinary and natural meaning of the legislative scheme employed, the Act applies to a judgment or order obtained in family proceedings within the compendium of civil proceedings.

[30] The submission of the husband that the Act has no means of being implemented in relation to family proceedings because the rules have not provided for such a procedure is equally untenable. The scope of power of a statute cannot be limited by the rules of Court. In **Port Contractors Ltd v Shipping Association Of Trinidad; Shell Trinidad Ltd v Seamen And Waterfront Workers Trade Union**, the Court of Appeal of Trinidad and Tobago had to consider whether the Industrial Court of Trinidad and Tobago had the power to entertain and rule upon applications for joinder, notwithstanding its failure to prepare rules of court regulating same as providing for under its enabling statute. The decision of the Court of Appeal was read by the Honourable Mr. Justice Telford Georges, JA, concurred unanimously by the acting Chief Justice, Phillips C.J. (Ag.) and Fraser J.A. The Court declared that:

> "It could hardly have been intended that a court given such wide power to regulate its procedure without a code of rules should be restrained from exercising a power of joinder unless it produced a code dealing with the

terms and conditions under which joinder would be ordered. It must be borne in mind that any rules prescribed would not limit the scope of the power. This must depend on the Act itself. They would merely regulate the procedure for the exercise of the power.

…To hold that the power cannot be exercised in the absence of a prescribed code of rules would mean that parties to disputes would be deprived of the benefit of the exercise of the power because of the court's failure to produce a code-a circumstance over which they could have no control. I do not think that this could have been intended." [7] (emphasis supplied.)

[31] To like effect, one applies the ratio of the Privy Council in **Attorney General for Ontario v Daly.**[8]

[32] Ground 2 of the husband's appeal can be dismissed on similar reasoning as applies to ground 1. In particular, I find no merit in the husband's argument that the historical antecedents of the AJA 1920, namely the Sumner Report and the UK Judgments Extension Act, 1868 exclude family proceedings from the purview of the Act and judgments registrable thereunder. For the reasons already articulated I accept the submission of the wife's attorney that a judgment obtained by the wife whereby a sum of money is payable in civil proceedings falls within the definition of "judgment" in section 2(1) of the Act, properly construed and applies to a judgment for lump sums finally adjudged as due and owing in family proceedings. The decision of a strong UK Court of Appeal[9] in **Beatty v Beatty**[10] affirms this conclusion.

Ground 3

[33] Ground 3 of the husband's appeal is premised on the fact that the further order made by Justice Moor, QC which Henry J permitted to be registered under the Act was a further order made in regard to a suit which was first determined on 5th January 2010. The husband therefore contends that once 12 months from the

[7] (1972) 21 WIR 505, per Georges, JA at p. 510
[8] [1924] A.C 1011, per Viscount Cave, p. 1015.
[9] Banks, Scrutton and Sargant L. JJ.
[10] [1924] All ER 314.

date of the original Order passed, then the wife is disentitled from registering any further orders which emanate from the same suit.

[34] I have found nothing in the wording of the Act which would allow for the time limit prescribed by section 3 of the Act for the registration of judgments to be interpreted in the manner which the husband submits. Indeed, the husband has not provided the Court with any authority to support such an interpretation. I therefore consider that the further order of Justice Moor Q.C. constitutes an order made by a Court in "any civil proceedings" consistent with the definition of "judgment" under section 2(1) of the Act and is therefore capable of registration.

[35] In any event, section 3(1) of the Act permits the local Court to allow for a longer period once it considers it just and convenient in all the circumstances that the judgment should be enforced in Antigua and Barbuda. I will address this more thoroughly when I come to deal with the wife's counter-appeal. However, it suffices to say at this stage that even if the husband's interpretation of section 3 is correct and the wife's application was out of time, the Court retains a discretion on the true construction of the Act as a whole to permit the registration nonetheless and so, this ground would fail at this hurdle as well.

Ground 4

[36] Ground 4 of the husband's appeal is that the learned judge below erred by failing to dismiss the wife's application on the ground of issue estoppel and/or cause of action estoppel and/or principles of abuse of process/estoppels arising from the decision in **Henderson v Henderson**[11] and/or the principle of stare decisis.

[37] I accept the wife's argument that issue estoppel and/or cause of action estoppel do not apply. On the 2013 Application brought by the wife, she is asking simply for registration of a foreign judgment in which her cause of action has already merged; she is not asking for judgment on any further or other cause of action. I

[11] (1843) 3 Hare 100, 67 ER 313.

also accept that no abuse of process arises on the part of the wife. The record of the proceedings before Judge Moor, QC, articulated in his judgment and thereafter are quite to the contrary. The judicial record of this case as it progressed speaks volumes for the earnestness of and adherence by the wife to due process, in her seeking access to justice for her claim against her former husband. As well, the principle of stare decisis is inapplicable, given the decisions arrived at by Michel J.[12]

[38] Henry J therefore correctly decided these points.

The Wife's Counter-Appeal

[39] The wife has counter-appealed the learned judge's decision to disallow the registration of the default costs certificate issued on 12th November 2010, on the basis that the judge erred in the exercise of her discretion permitted under section 3(1) of the Act. The wife has submitted, essentially, that the learned judge failed to consider the entirety of the section, in particular that the court has the discretion to allow registration which is out of time once it considers that it is "just and convenient" to do so, having regard to all the circumstances of the case.

[40] Section 3(1) of the Act reads in its entirety as follows:

> "Where a judgment has been obtained in the High Court in England or Northern Ireland or in the Court of Session in Scotland the judgment creditor may apply to the High Court at any time within twelve months after the date of the judgment or such longer period as- may be allowed by the Court to have the judgment registered in the High Court, and on any such application the court may, <u>if in all the circumstances of the case they think it is just and convenient</u> that the judgment should be enforced in Antigua and Barbuda, and subject to the provisions of this section, order the judgment to be registered accordingly." (emphasis supplied)

[12] See paragraph 4, supra.

[41] There is an undoubted discretion capable of being judicially exercised under the "just and convenient" provision in section 3(1) of the Act. This much is clear from the Privy Council decision of **Quinn v Pres-T-Con Limited**[13].

[42] In **Quinn,** the Board had to consider the application of the identically worded section in Trinidad and Tobago's **Judgment Extension Ordinance**. Admittedly, in this instance, the period of time by which the judgment creditor was out of time was much less, five (5) days, compared with the delay in the instant matter of approximately three (3) years between the making of the default costs certificate and the application by the wife to have the same registered.

[43] The learning in **Quinn** makes it clear that regardless of whether a formal application to extend time is made or not, the court is required to direct its mind to the question of whether an extension of time is just and convenient having regard to all the circumstances of the case. This question is to be determined with regard to any prejudice which the judgment debtor may suffer if the extension of time is granted. It does not appear that the learned judge below directed her mind to these issues, so it falls to this Court to consider their applicability.

[44] In my judgment, although the delay of approximately three (3) years between the making of the default costs certificate and the application to have same registered appears inordinate, all the circumstances of the case will include the relevant and material circumstance of the process of the litigation in this case, ongoing throughout that period both in England and within this jurisdiction. I have already alluded to the record of that litigation before the UK Courts, amply set out and commented on by Mr. Justice Moor, QC. The decision of Michel J in ANUHCV2010/0362 was not delivered until 8th December, 2011 and Justice Moor, QC delivered the further order on 9th July 2012. It cannot be said that the wife rested on her laurels for three (3) years, as the record shows that she was engaged in a constant stream of litigious proceedings throughout that period, all

[13] [1986] 1 WLR 1216.

related to her separation from the husband in the very proceedings which eventually culminated in judgment and the orders of Mr. Justice Moor, QC.

[45] Lastly, I can discern no prejudice which would be visited on the husband through the registration of the default costs certificate. He is no doubt obligated to pay costs to the wife as a result of the decision of the Honourable Mr. Justice Moor, QC in the original suit, and the registration of the default costs certificate within this jurisdiction will simply allow for the enforcement against him of that existing obligation. That this is the intention of the Act has already been detailed earlier in this judgment, and I can see no reason to disentitle the wife, as judgment creditor, from the benefit which has been afforded to her by a court of competent jurisdiction in the United Kingdom.

Disposition

[46] I would accordingly dismiss the husband's appeal and allow the wife's counter-appeal, with costs of both here and below to be assessed if not agreed.

Post Script:

I apologise to the Parties for the delay in producing this judgment, which delay was unavoidable; it was my responsibility to produce the first draft for consideration of my Brother and Sister and, I apologise to them as well. I thank the Attorneys on both sides for their comprehensive submissions, all of which have been considered.

I concur.
Davidson Kelvin Baptiste
Justice of Appeal

I concur
Louise E. Blenman
Justice of Appeal

By the Court

Chief Registrar