

Astalia vs Octavia

A case focus on the high profile cross-border legal feud between Astalia Investment Limited and Octavia Limited. A commentary on the pivotal outcome by Asim Ahmed and Hadiel Hussien of BSA.

International law outlines the criteria for being a sovereign state and emphasises features such as a permanent population, defined territory, an independent government, and the capacity to engage in international relations with other sovereign states.

One essential aspect of sovereignty is the principle of 'exclusivity of jurisdiction', which asserts that decisions made by a sovereign state within its territorial borders should not be challenged by another sovereign state or entity. Thus, the process of recognising and enforcing foreign judgments or arbitration awards must be dealt with in a prudent and sensitive manner.

Prior to the promulgation of the latest Federal Decree-Law No. 42/2022 on the Civil Procedure Law ("CPC"), the process of recognition and enforcement of foreign judgments in the UAE was complex and lengthy.

Recently, it has been observed that the UAE is progressively becoming more accommodating to recognising and enforcing foreign judgments and arbitration awards. As part of this initiative, the UAE legislator established a robust framework that not only simplifies the process of recognition and enforcement of foreign judgments but also provides relief for interim measures to enhance the enforcement process.

In the latest legal framework, a party can still rely on treaties or conventions. Nonetheless, in the absence of a treaty or a convention, the recognition and enforcement of a foreign judgment in the UAE depends on the satisfaction of the conditions stipulated in the CPC.

The choice of jurisdiction within the UAE (onshore courts vs DIFC) depends on several factors such as the jurisdiction where the decision was issued, availability of assets in the relevant jurisdiction and so on.

In the UAE onshore Courts, the party seeking recognition of a foreign judgment must submit a petition directly to the execution judge in order to commence enforcement of the foreign judgment in the UAE.

The CPC stipulates two main requirements for a foreign judgment to be recognised and enforced by the UAE Courts:

1. The existence of reciprocity between the UAE and the country in question, which refers to the ability of the UAE litigants to enforce another judgment under the same conditions laid down in the law of the foreign country; and
2. Compliance of the foreign judgment with all five requirements stipulated in Article 222 of the CPC, which include:
 - i. The UAE courts must not have had exclusive jurisdiction over the dispute, and the foreign court had the jurisdiction to do so.
 - ii. The foreign judgment is issued by a competent court according to the law of the foreign country and duly attested.
 - iii. The litigants to the foreign judgment were summoned to attend and duly represented.
 - iv. The foreign judgment has the force of res judicata (final and enforceable) according to the law of the relevant foreign country.
 - v. The foreign judgment does not conflict with a judgment or order rendered by a UAE court and complies with UAE public order and morals.

CASE STUDY: ASTALIA VS OCTAVIA

In the following section, BSA presents a case study that addresses the issue of the recognition and enforcement of a foreign judgment issued by the Courts in the Democratic Republic of Congo ("DRC"), a country with whom the UAE lacked any diplomatic representation or existing treaties at the time of the trial.



In 2021, BSA was retained to defend Octavia Limited (“**Octavia**”), a JAFZA offshore company ultimately owned by a French businessman, Pascal Beveraggi, in a lawsuit filed by Astalia Investment Limited (“**Astalia**”) before the Dubai Courts, to recognise and enforce a foreign judgment issued by the Kolwezi Court of First Instance in DRC.

BSA’s successful defense highlights the need for strict observance of the conditions stipulated in the then applicable CPC.

Astalia is an offshore company registered in the Mauritius and is ultimately controlled by Moise Katumbi Chapwe, a politically influential individual currently running in the DRC presidential election. Katumbi was also the former governor of the copper and cobalt rich Katanga province and one of DRC’s wealthiest businessmen. The legal journey of the dispute between Octavia and Astalia commenced in France, then escalated to DRC Courts, and finally, the UAE.

The crux of the legal battle is one relating to a dispute over the ownership of Mining Company Katanga (“**MCK**”), which was

controlled by Astalia. In 2015, MCK was sold for USD120 million to Necotrans Mining (mining arm of the French giant logistics group, Necotrans Holding), but in 2017 the aforesaid group filed for bankruptcy before the French Courts. Thereafter, under the bankruptcy proceedings Octavia acquired Necotrans Mining’s shares as one of the group’s distressed assets and rebranded the business to NB Mining, which was then liquidated in DRC due to various legal issues linked to this entity. Octavia then established a fresh entity called NB Mining Africa. However, NB Mining had already failed to pay MCK’s shareholders the share purchase price. Thus, the legal battle between Katumbi and Beveraggi transpired.

In desperate attempts to regain ownership of MCK, it is alleged that Astalia and Katumbi used their influence over the DRC judicial system to obtain a judgment from Kolwezi Court of First Instance, in which Astalia was awarded recovery of its shares, assets and USD70 million in compensation. Octavia immediately appealed the Kolwezi judgment, and its appeal remains pending to this day. Octavia also obtained a final

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judgment from Kinshasa Courts in DRC, through which the Kolwezi court-imposed seizures were voided.

Despite Astalia's knowledge of the Kinshasa judgment, it unlawfully proceeded to apply for the recognition and enforcement of the Kolwezi judgment before the Dubai Courts. Astalia presented the translation of a foreign judgment issued by the Kolwezi Court of First Instance in the DRC and claimed that the adjudged amount of USD70 million awarded as compensation was not paid to Astalia in DRC.

Astalia's reliefs were granted by the execution judge, following which Astalia proceeded to obtain seizure orders against Octavia's assets in the UAE, which alarmed Octavia about the UAE court proceedings.

ASTALIA VS OCTAVIA: APPLICATION OF THE REQUISITE CONDITIONS PROVIDED FOR IN THE CPC

In the original Kolwezi judgment issued in French, the DRC Courts expressly stipulated that the compensation amount of USD70 million can only be enforced once the judgment becomes final.

Astalia submitted an Arabic translation of the original judgment, which intentionally omitted the inclusion of the precondition of a final judgment to enforce the compensation of USD70 million.

Upon notice of this matter, BSA rightly argued that the Kowlezi judgment cannot be enforced in the UAE, as it did not acquire the force of *res judicata*, meaning that it did not obtain the force of a final judgment as required by the CPC.

BSA's argument was fortified by proving that Astalia had fabricated a DRC court certificate, claiming that the Kowlezi judgment has the force of a final judgment, magnifying the gross contravention of the CPC conditions. BSA also furnished a DRC court certificate confirming that Octavia's appeal against the Kolwezi judgment remains pending before DRC Courts.

Likewise, as the UAE did not, at the time, have an embassy in DRC, the attestation of the translated judgment was procured at the UAE embassy in Rwanda. BSA argued that the attestation from a neighboring country indicates the lack of reciprocity between the UAE and DRC.

In another attempt to bypass the provisions of the CPC, Astalia failed to serve the summons relating to the recognition and enforcement petition to Octavia's agent

registered with JAFZA, denying Octavia its right to due process. BSA highlighted that this violates the fundamental rules of proper service of summons, which should entail revocation of the recognition decision granted to Astalia by the UAE execution judge.

OUTCOME OF THE RECOGNITION AND ENFORCEMENT PETITION: ASTALIA VS OCTAVIA

BSA's well-founded defense and its utilisation of a variety of arguments pertaining to the non-fulfillment of the CPC's relevant conditions resulted in ruling in favor of Octavia. The Dubai Appeal Court annulled the initial recognition and enforcement decision issued by the execution judge and revoked all enforcement measures initiated by Astalia, including the seizure orders of Octavia's assets in the UAE.

BSA persuaded the Dubai Court that Astalia's Kolwezi judgment is not yet enforceable, and the latter deliberately avoided submitting the Kolwezi judgment in its original French language, which contains an express provision prohibiting Astalia from enforcing the judgment until it becomes final. BSA also proved that the Kolwezi judgment was appealed, and such appeal is still ongoing before DRC Courts.

In the face of numerous challenges arising from the falsification of documents and the involvement of a powerful political figure currently vying for the presidency in DRC, BSA demonstrated its prowess by securing an equitable verdict and successfully reclaiming all of Octavia's assets that had been wrongfully seized in Dubai. This accomplishment holds significant implications, as it is poised to play a pivotal role in facilitating the retrieval of Octavia's unlawfully seized assets within the jurisdiction of the DRC as well. 🏛️



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