Neutral Citation Number: [2024] EWHC 1503 (Comm)

Case No: CL-2021-000720

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT
IN THE MATTER OF THE ARBITRATION ACT 1996
AND IN THE MATTER OF AN ARBITRATION BETWEEN

Royal Courts of Justice,
Strand, London, WC2A 2LL

Date: 14 June 2024

Before :

MASTER SULLIVAN

- -

Between :

ZHONGSHAN FUCHENG INDUSTRIAL INVESTMENT CO. LTD.
(Claimants in the Arbitration)

Claimant

- and -

THE FEDERAL REPUBLIC OF NIGERIA
(Respondent in the arbitration)

Defendant

- -
- -

Christopher Harris KC and Mark Wassouf (instructed by Withers LLP) for the Claimant
Riaz Hussain KC (instructed by Squire Patton Boggs (UK) LLP) for the Defendant

Hearing dates: 21 March 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 14 June 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MASTER SULLIVAN

Master Sullivan:

1. The Claimant ("Zhongshan") seeks final charging orders over two properties owned by the Defendant (who I will refer to as Nigeria). Interim charging orders were made in respect of those properties on 16th June and 18th August 2023. This is my decision on whether those orders should be made final.

2. On 26 March 2021 an arbitral tribunal made a final award of $55,675,000 plus interest of $9,400,000 and costs of £2,864,445 payable by Nigeria to Zhongshan. On 21 December 2021 Mrs Justice Cockerill gave permission to Zhongshan to enforce the arbitration award in this jurisdiction in the same manner as if it was a judgment or order of the High Court and ordered that Nigeria pay Zhongshan's costs of the application. Nigeria sought to appeal that decision unsuccessfully and a further costs order was made against Nigeria by the Court of Appeal.

3. By the time of the interim charging order applications, Nigeria had not complied with the award or made any payment of the costs orders. The outstanding sums were, including the costs and interest, equivalent to around £59.6 million. Nigeria had not made any payment by the date of the hearing.

4. The properties against which the charging orders are sought are 15 Aigburth Hall Road, Liverpool ("Aigburth") and Beech Lodge, 49 Calderstones Road, Liverpool ("Beech Lodge"). Nigeria owns both properties. Together, Zhongshan estimates they are likely to be worth between perhaps £1.3 and £1.7 million. Neither property is recorded as diplomatic or consular premises or premises of the mission or residential property notified as a private residence of a member of the mission. None of those listed as resident there on publicly available databases have any connection with the mission.

5. Nigeria objects to the interim charging order being made final on a number of grounds:

    i) The application for the charging order and the interim charging order were not properly served in accordance with s12(1) of the Sate Immunity Act 1978 ("SIA").

    ii) State immunity applies to the premises as the acting Head of Nigeria's High Commission in London has certified under s13(5) of the SIA that the properties are not in use or intended for use for commercial purposes and Zhongshan has not proven the contrary.

    iii) There was a failure to give full and frank disclosure at the interim charging order stage by Zhongshan and therefore the court ought not exercise its discretion to make the charging order final.

    iv) The court should decline to make a final charging order as Zhongshan is taking a multiplicity of enforcement actions and there is no safe way of knowing the totality of the sums which may be recovered in other claims in respect of the same arbitration award.

The Law

6. The Court may make a charging order under CPR 73. The process in the High Court is that an application is made on a without notice basis for an interim charging order, which is considered by a judge on the papers, then a hearing is listed to determine whether that order should be made final. CPR 73.10A provides that if any person objects to the making of a final charging order the person must file and serve written evidence setting out the grounds of objections not less than 7 days before the hearing. The court has a discretion to make the order final.

The State Immunity Act

7. The SIA gives any foreign state immunity from the jurisdiction of the courts of the United Kingdon except as provided for in the SIA. Section 12 (as relevant) of the SIA provides that any writ to other document required to be served for instituting proceedings against a State shall be served by being transmitted through the Foreign Commonwealth and Development Office to the Minister of Foreign Affairs of the State.

8. Section 13(2) of the SIA provides:

> "Subject to subsections (3) and (4) below—"
>
> (b) the property of a State shall not be subject to any process for the enforcement of a judgment or arbitration award or, in an action in rem, for its arrest, detention or sale.

9. Section 13(4) provides:

> "Subsection (2)(b) above does not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes; but, in a case not falling within section 10 above, this subsection applies to property of a State party to the European Convention on State Immunity only if—
>
> …(b) the process is for enforcing an arbitration award."

10. This is an application to enforce an arbitration award and in summary therefore, in this case, a charging order can only be made against properties owned by Nigeria if the property is:

> "for the time being in use or intended for use for commercial purposes"

11. Commercial purposes are defined in section 17(1) SIA as "purposes of such transactions or activities as are mentioned in section 3(3) above".

12. Section 3(3) as relevant provides:

> "In this section "commercial transaction" means—
>
> (a) any contract for the supply of goods or services;…
>
> (c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or in which it engages otherwise than in the exercise of sovereign authority;"

13. Section 13(5) SIA provides:

> "The head of a State's diplomatic mission in the United Kingdom, or the person for the time being performing his functions, shall be deemed to have authority to give on behalf of the State any such consent as is mentioned in subsection (3) above and, for the purposes of subsection (4) above, his certificate to the effect that any property is not in use or intended for use by or on behalf of the State for commercial purposes shall be accepted as sufficient evidence of that fact unless the contrary is proved."

14. The two questions arising out of the SIA are first whether the documents were properly served. It is not in issue that they were not served in accordance with section 12 SIA. Second, whether the properties are for the time being in use or intended for use for commercial purposes as defined in section 3(3) SIA. If not, state immunity applies and the interim charging order must be discharged. If they are, the court still has a discretion whether to make the charging orders final.

Service

15. The Claimant served the interim charging order and application notice on the solicitors on the record for Nigeria in the arbitration enforcement proceedings, those proceedings having initially been served in accordance with s12(1) SIA.

16. The Claimant's position is that section 12(1) SIA only applies to the service of a writ or other document which *institutes* proceedings. That was the arbitration enforcement claim. The application for an interim charging order is an application within those proceedings, not separate proceedings which are being instituted and therefore s12(1) does not apply. The Claimant relies on the decision of Master Davison in *GPGC Limited v The Government of the Republic of Ghana* [2023] EWHC 2531 (Comm), in which the same argument was raised and in which Master Davison held an that an application for a charging order is a further step in the arbitral enforcement proceedings and not further proceedings. Therefore s12(1) does not apply.

17. Nigeria's submission is that *GPGC v Ghana* offers no good reason why s12 should be read as not affording states the significant protections of s12 SIA and there are good reasons for affording these protections where enforcement action is being taken. The application for a charging order is the first time Nigeria would have the opportunity to

assert immunity from enforcement under section 13 of the SIA. They rely on other cases where charging order applications were served through diplomatic channels.

18. In my judgment s12(1) does not apply to the application for an interim charging order in these proceedings. The application for an interim charging order is a further step in the enforcement of the arbitral award, it is not a new proceeding. I agree with and adopt (without repeating) the reasons of Master Davison in paragraph 15 of his judgment. They are the reasons why the s12(1) protection is not extended to this sort of application in arbitral enforcement proceedings.

19. In respect of the three cases relied on by Nigeria, in *LR Avionics Technologies Ltd v Nigeria* [2016] EWHC 1761, the interim charging order was served through diplomatic channels. Other than that fact the issue of service is not discussed. In *General Dynamics v Libya* [2022] AC 318, the importance of s12(1) to immunity from enforcement was emphasised, as it was in *Norsk Hyrdo ASA v The State Property Fund of Ukraine* [2009] BUS LR 588. However both of these cases do so in the context of applications under CPR 62.18, which is the application to enforce an arbitration award as if it were a judgment of the High Court, not applications for interim charging orders once such permission has been given.

Section 13 SIA and state immunity

20. The Claimant's application for a charging order provided evidence from Ms Eleni Polycarpou dated 24 April 2023, solicitor acting for Zhongshan, that in respect of Aigburth, an individual was listed on the electoral roll as having lived there since 2021 and was not related to Nigeria. In respect of Beech Lodge the electoral roll showed three individuals residing there variously between 1997 and 2007 none of whom had any relationship with Nigeria.

21. By a further witness statement dated 16 August 2023, she identified two further apparently related individuals (having the same surname) living at Aigburth through what appears to be a tracing service going back to 2009.

22. A certificate pursuant to section 13(5) SIA from Nigeria dated 12 March 2024 states:

> "Aigburth Hall and Beech Lodge are not in use or intended for use by or on behalf of the Federal Republic of Nigeria for commercial purposes.
>
> The use of Aigburth Hall and Beech Lodge is to be available to serve as (i) premises for providing consular services to Nigerians in the Northwest of England; and/or (ii) residences for Nigerian officials or citizens who may from time to time be located in the Northwest of England, and (iii) generally for use by the Nigerian Mission for events to cater to our staff and citizens in the region as needed.
>
> While the properties have from time to time been rented out, this is at below market rent and is not for commercial purposes but is a means of ensuring each property is secured and maintained and does not become dilapidated from remaining

> vacant. Any rent received by the Nigerian High Commission is connection with Aigburth Hall and Beech Lodge is not used for commercial purposes".

23. A witness statement has also been served by E O Audu, Senior Counsellor and Head of Chancery at the Nigeria High Commission, dated 13 March 2024 which states that it is not possible to easily acquire and dispose of properties according to the High Commission's precise need at any given moment in time. It is therefore essential to the functioning of the Nigerian Mission in the United Kingdon that Nigeria maintains a portfolio of properties which could be made available for use for their citizens as and when the need arises. He states that Aigburth was bought in 1976 and Beech in 1982. He further states that they were used to accommodate consulate staff located in the Northwest in the 1970s and 1980s. It is said renting them out is the most cost effective way to keep the premises secure and maintained for consular and state use as needed.

24. In response, Zhongshan's solicitor, Christopher Birks, visited Liverpool on 15 March 2024 and attended Beech Lodge and provided a witness statement dated 18 March 2024. In summary, Mr Birks noted that the property appeared be in poor condition with large electrical home appliances strewn across the front lawn and paint peeling off the building.

25. He spoke to a resident of flat C who gave information about some of the tenancies as follows. Flat A is rented at £550 pcm. Flat B was previously occupied by the resident spoken to from 2008 to 2017 and she paid £460pcm. The current resident pays £550pcm. Her current flat, flat C, was rented from 2020 and was £800pcm but was put up to £880pcm in April 2023. She lives there with her daughter. The resident lets through a letting agency and she had complained about the state of the property as it was dilapidated.

26. Some comparisons were provided by Mr Birks in his witness statement of the sort of rents on Zoopla for what were assumed to be similar properties in the area. A 1 bed flat was advertised for £800pcm and a 2 bed flat for £795pcm. Another 2 bed flat for £1,195pcm. The latter appears to be geographically the closest to Beech Lodge.

27. Zhongshan's position is that the properties are rented out as residential properties to persons unconnected with the mission. They are at what appears to be market rent. They are therefore for the time being in use or intended for use for commercial purposes.

28. Zhongshan's submission is that where the evidence establishes a particular use, the question is whether that use is commercial and the primary consideration must be the nature of character of the relevant activity, what is being done with (or in this case on) the property in question; *LR Avionics Technologies Ltd v Nigeria* [2016] EWHC 1761 (Comm) at 38. It is submitted there is no real dispute that the properties are currently let out for ordinary residential tenancies and were at the time of the application. It is submitted that is an activity which the nature or character is plainly commercial. It is submitted that a tenancy agreement or lease is a contract for services per s3(3)(a) SIA.

29. It is submitted that the test under section 3(3)(a) is concerned with the purpose of the contract in place at the time the relevant application is made. It is not therefore

relevant that the state might one day use the properties for some other public purpose (*SerVaas Inc v Rafidain Bank* [2013] 1AC 595 at 19). It cannot be relevant when the future use contended for would require Nigeria to end the current commercial contract in place.

30. Nigeria's position is that the certificate states that the properties are not in use for commercial purposes, and that there is no sufficient evidence provided by Zhongshan to rebut the certificate. On issue of the certificate, a presumption is created as to the use and the burden of proof is on the applicant to establish on balance of probabilities that in fact the property is in use or intended for use for commercial purposes. Section 13(5) contains no requirement that the certificate should provide any particulars of the use or intended use of the property in question (*AIC Ltd v Niger*ia [2003] EWHC 1357(QB)). No inferences should therefore be drawn from a lack of further information in the certificate.

31. In addition Nigeria submitted during the hearing that the evidence provided by Zhongshan does not address the correct legal test. Nigeria's position is that a lease is not a contact for goods or services and so the only possible exception to immunity must be under s13(3)(c), a commercial transaction being any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a State enters or in which it engages otherwise than in the exercise of sovereign authority. Zhongshan must therefore prove that the tenancies were entered into otherwise than in the exercise of sovereign authority.

32. It is submitted that the meaning of "in use for commercial purposes" is different from whether the property is the subject of or used in connection with a commercial transaction. Nigeria relies on *SerVaas Inc. v Rafidain Bank* [2013] 1 AC 595 at 17:

> "Property will only be subject to enforcement where it can be established that it is currently "in use or intended for use" for a commercial transaction. It is not sufficient that the property "relates to" or is "connected with" a commercial transaction."

33. Nigeria submits the "use" of the property is not the same as the "purpose" of the use. So the question is what is the purpose of the use of the property, rather than what is the actual use of the property. In *LR Avionics Technologies Ltd v Nigeria* [2016] EWHC 1761 the fact property was leased at market rent to a company, OIS, was not sufficient to establish it was used for commercial purposes. It was in fact leased to OIS and OIS then carried out visa and passport services at the property as agent for Nigeria. Mr Justice Males held:

> "Ms Al-Rikabi challenges this approach, submitting that the property is being used for commercial purposes because it is leased to OIS at what appears to be a commercial rate and there is nothing on the face of the lease to suggest that it was entered into in the exercise of sovereign authority. Therefore, she says, the transaction is of a private law character falling within the definition of commercial activities in section 3(3)(c) of the Act. In my judgment, however, that is to take too narrow a view. There is in fact no evidence that £150,000 represents a commercial rate for the property and it is plain from the lease

> that its purpose is to enable OIS to provide visa and passport services. In any event, however, a transaction which has "many of the hallmarks of a commercial transaction" may nevertheless be entered into in the exercise of sovereign authority (see *Svenska Petroleum* at [133] and *Pearl Petroleum Co Ltd v Kurdsistan Regional Government of Iraq* [2015] EWHC 2261 (Comm), [2016] 4 WLR 2 at [36]). More fundamentally, however, the lease is not the relevant transaction for which the Fleet Street property is being used. The purpose for which the property is being used is not merely to earn rent under a lease but to provide consular services. That is in effect what the Acting High Commissioner has certified. The contrary has not been proved.
>
> …
>
> In this case the property may be connected with a commercial transaction, namely a contract between the High Commission and OIS for the supply of services by OIS to the High Commission, but the purpose for which it is in use is the provision of visa and passport services to Nigerian citizens and others wishing to travel to that country. That is (or those are) the relevant transaction(s) for which the property is in use. The fact, if it is the fact, that these services are being provided by an agent who has a contract with the High Commission is merely incidental."

34. Mr Hussain KC also referred to Australian case, *Firebird Global Master Fund II Ltd v Republic of Nauru and another* [2015] HCA 43 which considered the meaning of "in use…for commercial purposes" in section 32(3) of the Australian Foreign States Immunities Act 1985. In that judgment French CJ and Keifle CJ (part of a five judge court) held that the words direct attention to the reason why, objectively, the property is in use.

35. Nigeria submits that it has served a certificate which states that the use of the properties is to be available to serve as (i) premises for providing consular services to Nigerians in the North West (ii) residences for Nigerian officials who may be in the North West and (iii) generally for use by the mission for events to cater to its staff. Although they have been rented out from time to time that is a means of ensuring each property is maintained and secured (I paraphrase). The use is therefore for consular purposes. Nigeria's submission in summary is that the purposes for which the properties were are in use is to keep them in a portfolio to be available for consular services.

36. Nigeria's position in respect of the evidence of Mr Birks is that it is late hearsay evidence and is plainly insufficient to disprove the certificate. The hearsay evidence of amounts of rent paid by other tenants should be given no or very little weight, it is inherently unlikely that the resident would know what rent the other residents are paying, there is no record of any tenancy agreement, or the amount of rent or duration of lease. The credit check documents provided in evidence in earlier witness

statements do not show a lease so there is no evidence to show on what basis the property is occupied or on what terms.

37. Following the hearing and before I had finished the draft of this judgment Nigeria notified me of the decision of the Supreme Court given on 8 May 2024 in *Argentum Exploration Ltd v Republic of South Africa* [2022] EWCA Civ 1318 and referred me to particular paragraphs in which the court considered the meaning of "in use or intended for use for commercial purposes", although not making full submissions. Zhongshan's position is that the case does not have any relevance to my decision. Having read *Argentum,* and in particular the paragraphs referred to, it does not in my judgment alter the position on the issues I have to decide. The issue in Argentum was whether cargo on a ship was in use or intended for use for commercial purposes. The decision, whilst commenting on the law as to what "in use or intended for use" means in both section 10 of the SIA (which is not relevant here) and section 13(4) SIA (which is) and in particular whether the authorities in respect to section 13(4) applied to section 10(4), the decision was focused on the particular position of cargo under section 10(4)(a) SIA which is not in issue in this case.

Conclusion on immunity

38. The question I have to answer is what is the purpose for which the property is in use or intended for use at the time of the application. That involves consideration of what the relevant transaction is for which the property is in use. In this case, the exception that I have to consider is that in section 3(3)(c). I do not accept that a residential tenancy agreement, which is the commercial transaction that is being alleged, is a contract for the sale of goods or services and so exempt under s3(3)(a).

39. The focus should be on the nature or character of the relevant activity, what is actually being done with the property in question. (*LR Avionics*) It is not sufficient that the property relates to or is connected with a commercial transaction. It is the use or intended use to which the state has decided to put the property concerned and not the transaction or activities from which the property originated which determine whether there is immunity (*Argentum* at 786).

40. If I do not accept that the properties are used for residential tenancies, then that would mean that the certificate would not be rebutted.

41. The question, if I accept that the properties are used for residential tenancies, is whether that transaction is a transaction or activity otherwise than in the exercise of Nigeria's sovereign authority. Is the property in use for a transaction which is of a private law character or is it in use for consular purposes? I do not understand for example that Zhongshan would seek to argue that if the tenancy was entered into in the exercise of sovereign authority (as it might be if it was to an employee of Nigeria) it would not be exempt.

42. The certificate from Nigeria creates a presumption that the use is for consular purposes. I accept that I should not draw inferences from any gaps in the certificate. The certificate need say no more than it is not in use for commercial purposes. The same considerations do not apply in my judgment to the witness statement also served by Nigeria. That has no special status. I remind myself the certificate creates a rebuttable presumption as to the facts stated within it and I have to assess whether,

balance of probabilities, that presumption has been rebutted by the other evidence before me.

43. The first question is therefore whether, at the time of the application, the properties were being let for residential tenancy. I accept on the balance of probabilities they were and are. Insofar as Nigeria states that the certificate does not confirm that they are and there is insufficient evidence from Zhongshan to prove it, I accept the evidence from Zhongshan summarised above does prove that, on the balance of probabilities they are so rented out. The evidence of the searches plus the evidence, albeit hearsay, from Mr Birks is sufficient in my view to prove that.

44. That is not a complete answer to the issues I have to decide. Nigeria's position is that the certificate states that the use of the properties is to be available premises for providing consular services, residences for Nigerian officials and generally for events to cater to staff and the rental is to ensure the property is maintained and secured and are at below market rent.

45. In my judgment this situation is not analogous to that in *LR Avionics* where, although there was a lease, the lease was to an agent to provide consular services at the property. In that case the activity being undertaken on the property was consular services, there was an associated lease but the nature of the use was consular.

46. Here, the lease is for the purpose of residential tenancies and no consular activities are actually taking place on the premises. It seems to me that is a transaction which is capable of being for commercial purposes. Nigeria says it is not for two reasons, it is at below market rent and is a means of ensuring each property is secured and maintained and does not become dilapidated so that it is available for its intended use.

47. In *AIC v Nigeria* [2003] EWHC 1357 to which I was referred during the course of the hearing, and where the question was whether sums held in certain bank accounts were property in use or intended use for commercial purposes Stanley Burnton J said at paragraph 56:

> "The test in section 13(4) of the State Immunity Act applies as at the date of the issue of process of execution against the property in question: the words "for the time being" make this clear. The use or intended use of property may change over time. In the case of a bank account, the onus is on the judgment creditor to show that the use or intended use of the account is, apart from minimal exceptions, for commercial purposes within the meaning of the Act: Lord Diplock in Alcom at page 604D-E. Evidence of recent use of an account wholly for commercial purposes over a significant period of time may lead to the conclusion that the account is used or intended for use wholly for commercial purposes; but the older the use in evidence, the weaker the inference that may be drawn as to the use or intended use of the account."

48. The witness evidence of Mr Audu is that the properties were used to accommodate consular staff in the 70s and 80s. He makes no further positive comment about their actual use from that time, save recognising they have been let on residential tenancies

from time to time. I take from that evidence that they have not in fact been used to accommodate consular staff or for other consular purposes since the end of the 1980s, so for the last 34 years.

49. I accept the evidence from Mr Birks as to the apparent state of Beech Lodge. He is a solicitor and makes the witness statement of his own perceptions with a statement of truth. The description is not of well maintained property.

50. He described it as dilapidated (from the outside) and notes that one of the tenants at Beech Lodge says that she has complained about disrepair. I accept that on a balance of probabilities Beech Lodge is let through a letting agency and that the rents are in the region of that reported to Mr Birks. I accept on balance of probabilities that the resident spoken to has lived at flats at Beech Lodge for the period 2008 to 2017 and 2020 to date.

51. Those facts are it seems to me inconsistent with the properties being available to serve as the matters set out in paragraph 3 of the certificate at the date of the application. They are not currently available to serve for any of those matters as there are residential tenants in the property. On a balance of probabilities, that tenancy, the transaction which the property is currently subject to, would have to come to an end in order for Nigeria to use the properties in the manner set out. On the balance of probabilities, they have not in fact been in use for any of the matters set out in the certificate for the last 34 years.

52. It also seems to me the condition of Beech Lodge is inconsistent with what is said in paragraph 4 of the certificate that the residential tenancy is to secure and maintain the property.

53. In respect of whether the property is let out at market rent, the rents stated by Mr Birks do seem to be somewhat lower than the equivalent Zoopla rents. It was argued in the course of the hearing by Mr Hussain KC that Zhongshan couldn't establish some form of profit making as the rent was lower than the market rate. Whether a transaction is profit making is not the test for whether it is a commercial transaction although it may have evidential weight. A commercial transaction is a transaction or activity (whether of commercial, industrial, financial, professional or other similar character) into which a state enters or in which it engages otherwise than in the exercise of sovereign authority. Profit is not part of that definition. A contract at below market rate may tend to suggest it is not a commercial transaction, but it is not part of the definition. In this case, even accepting the rents are below market rate, that does not affect my overall view as to the use to which the property is put.

54. Whilst the evidence in respect of the state of the property is only in respect of Beech Lodge, it seems to me as both properties have been treated the same in the certificate, if the evidence is such to rebut the presumption cased by the certificate in respect of one property, it does so for both.

55. Insofar as it is argued that the money from the leases is not used for commercial purposes, that is looking at the wrong test. The property in question is not the rental income, it is Beech Lodge and Aigburth. The use to which the rental income is put is irrelevant.

56. In those circumstances Zhongshan has, in my judgment, rebutted the presumption created by the certificate and the properties were (and are) at the relevant time in use or intended for use for commercial purposes.

Discretion

57. Nigeria submits that in making the application for an interim charging order, Zhongshan inadvertently misled the court in respect of service. In the course of the interim application, it is submitted that Zhongshan told the Court thate there was an agreement with Nigeria to disapply s12(1) SIA in respect of the charging order application, which was wrong. In the witness statement in support of the application it was said "Nigeria is represented in these proceedings by Squire Patton Boggs who has indicated that they will accept service of documents in the proceedings on them by email". I asked for clarification by email of that, in part because I could not access the document in the exhibit which was referred to. I asked if the agreement related specifically to enforcement proceedings and referred to s12(1) of the SIA stating that there would need to be a very clear agreement that s12 didn't apply to the charging order application in order to disapply the service provision.

58. The response by email is said by Nigeria to be misleading as it states, "In response to your question, it follows that Nigeria's consent to service by email in its letter of 12 October 2022 letter was a specific consent to service by that means for purposes of these enforcement proceedings since these were the only proceedings on foot when the letter was sent."

59. It is submitted that the letter of 12 October 2022 in fact accepted service of the documents in the "above proceedings" following service of that claim under s12(1) through the ministry of foreign affairs, that being the enforcement claim. It is said that the email is misleading because it gives the impression that Nigeria agreed to dispense with s12(1) service and accept service by email of the charging order applications or alternatively of the enforcement claim. It is said both are wrong.

60. The email as quoted by Nigeria has been selectively quoted. It is clear from the email that the proceedings it was said to apply to were CL-2021-000720, described as these enforcement proceedings. It conveys that there was an agreement for Squire Patton Boggs to accept service in the proceedings. It also goes on to state that in any event s12(1) does not apply to the charging order applications as they are not documents "instituting proceedings". The documents instituting the proceedings were the arbitration claim form and related documents which were served in accordance with s12(1). I note in passing that letter is dated before the decision of Master Davison in *GPGC v Ghana*.

61. I was not misled in the way suggested by Nigeria, nor do I think it is a fair reading of the email to interpret it in the way in which Nigeria suggest. I do not accept therefore that there has been a failure of full and frank disclosure. Insofar as the statement in the letter that the consent means service is governed by s12(6) of SIA is wrong, that is not a material matter given the rest of the content of the letter, and the fact the letters referred to were provided as exhibits.

62. Nigeria also submits that I should not exercise my discretion to issue a final charging order as it is clear that Zhongshan are seeking to use other enforcement methods

including in other jurisdictions. There is no safe way of knowing what is the totality of Zhongshan's enforcement claims against the same arbitration award which is plainly material to my discretion.

63. This is a very significant judgment debt and the value of the properties is a small proportion of it (although a substantial sum in its own right). Parties are entitled to take as many types of enforcement action as they see fit to recover their debt. Given that so far none of the debt has been paid, it is fanciful to suggest that these charging orders, if made final, would mean that a greater sum than the judgment debt plus costs would be attached.

Conclusion

64. The properties are currently used for the purpose of leases to residential tenants unconnected with Nigeria and its Mission. Those are commercial purposes for the purpose of s13(4) of the SIA and therefore the enforcement against the properties is not barred by state immunity.

65. There is no good reason why I should not exercise my discretion to make the charging orders final, and I do so.