

PROCESS & INDUSTRIAL DEVELOPMENTS LIMITED v THE FEDERAL REPUBLIC OF NIGERIA [2025] UKSC 36

In a judgment handed down on 22 October 2025, the Supreme Court has confirmed the English courts' power to award costs in a currency other than sterling, but held that, where costs have been incurred and paid in sterling, they can be recovered in sterling without any enquiry into how the receiving party acquired the sterling.

The Facts

The Appellant ("P&ID") obtained an arbitration award against the Respondent ("Nigeria") arising out of a contract for processing gas for power generation, which it was alleged that Nigeria had failed to perform. The value of the final award was US\$ 6.6 billion plus interest. In 2023, Nigeria successfully challenged the award in the Commercial Court under s. 68(2)(g) Arbitration Act 1996 on the basis that it had been procured by fraud. By then, the award was worth around US\$ 11 billion, including interest, a sum which was multiple times Nigeria's annual health and education budgets. Nigeria was awarded its costs of the proceedings.

Nigeria retained English solicitors – Mishcon de Reya LLP – in the s. 68 challenge, who delivered their bills to Nigeria in sterling and were paid in sterling. The costs sought by Nigeria total around £44 million.

The Issue

P&ID argued that Nigeria should only be able to recover its costs in its own currency, the naira, rather than sterling. This was because, on the assumption that Nigeria had procured sterling to pay its lawyers by converting naira into sterling, the value of the naira relative to sterling had plummeted since the costs had been paid. Thus, argued P&ID, Nigeria would receive a windfall if it could recover the costs in sterling, because the recovered amount of sterling would be converted back into a far greater quantity of

naira than it had originally expended. The process argued for was therefore one whereby the costs claim would be presented and assessed in sterling, but the sterling value of each solicitor-client bill following assessment would be converted back into naira at the prevailing exchange rate when the bill had been paid. The effect of this process on the bill as drawn would have been to reduce it from around £44 million to around £12 million.

At the heart of P&ID's argument was the submission that the appropriate currency in which to award costs should be determined in the same way as the appropriate currency in which to award damages, following cases such as *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443 and *The Despina R and the Folias* [1979] AC 685. Those cases indicated that the appropriate currency was the one in which the loss was felt. This approach was said to be supported by the decision of John Kimbell QC on a summary assessment of costs in *Cathay Pacific Airlines Ltd v Lufthansa Technik AG* [2019] 1 WLR 5057; [2019] EWHC 715 (Ch), in which he had assessed in euros costs which had been billed and paid in euros and had relied on the damages cases referred to above in support of that decision.

There was in fact a dispute about whether Nigeria had converted naira into sterling to pay its lawyers or had paid the sterling out of existing sterling reserves. That dispute had not been resolved.

P&ID had failed in its argument at first instance and in the Court Appeal, but obtained permission to appeal to the Supreme Court

The Court's Findings

P&ID's appeal was dismissed. The Court rejected the comparison between awards of costs and awards of damages, stressing that, while damages are recovered as of right, awards of costs are discretionary and have never been intended to be a full indemnity,

excluding, for example, whole categories of expenditure, such as funding costs. The Court also found that it was simply irrelevant how the funds to pay the costs had been obtained and that conversion from another currency was in principle no different from the sale of a valuable object. The Court was also concerned that P&ID's approach would lead to disproportionate satellite litigation about the appropriate currency.

The result is that, where a party has been billed its costs in sterling and paid them in sterling, the court will not enquire into how the sterling were acquired and the costs can straightforwardly be claimed and recovered in sterling.

However, the Court also confirmed that costs can be recovered before the English courts in currencies other than sterling and held that the general rule is that *“an order for costs should be made in sterling or in the currency in which the solicitor has billed the client and in which the client has paid or there is a liability to pay”* [25]. However, the court has the power to depart from that approach in a particular case, for example if the choice of currency was abusive or otherwise inappropriate, perhaps where the currency had no connection with either the litigant or the solicitors in order to speculate on it increasing in value.

The decision in *Cathay Pacific* to assess and award the costs in euros was therefore specifically approved, but the reasoning applying the damages approach should be regarded as overruled.

Issues for the Future

The Court's clarification that costs can in principle be recovered in any currency is welcome, but it leaves a number of issues to be worked out. The most obvious is whether it is nevertheless practicable to assess the costs in that currency, particularly a currency with which the lawyers and Costs Judges may have little experience. There is already an established practice of costs incurred in a foreign currency being assessed in sterling with the currency being converted on the dates when the costs were paid to

their lawyers by the receiving party (see *Deutsche Bank AG v Sebastian Holdings* [2020] EWHC B16 (costs) and *Micula v Romania* [2023] Costs LR). Will that continue? Those issues will be even more acute when it comes to costs budgeting. Will Masters be expected to budget cases in foreign currencies?

Paying parties may also complain that they have had no notice that costs would be sought in another currency, particularly if that currency has appreciated against sterling over the course of the litigation, so that the paying party ends up paying more in that currency than they would have paid in sterling.

These issues will have to be worked out on a case by case basis, though the Supreme Court noted that, if claims for costs in foreign currencies become more common, there may be a need for Practice Directions to establish a consistent approach to such claims and deal with issues such as notice to the other party and protection of paying parties from significant currency fluctuations.

Jamie Carpenter KC

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Jamie represented Nigeria in the Supreme Court and remains instructed in the detailed
assessment

Disclaimer: this article is not to be relied on as legal advice. The circumstances of each case differ and legal advice specific to the individual case should always be sought.