UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 25-20700-CIV-ALTONAGA/Reid

MATERIAL AVIATION TECHNOLOGIE NAVIGATION,

Plaintiff,

v.

DEMOCRATIC REPUBLIC OF THE CONGO,

Defendant.
_____/

ORDER

THIS CAUSE came before the Court upon Defendant, Democratic Republic of the Congo's Motion to Vacate Default and Default Judgment [ECF No. 37], filed on December 5, 2025. Plaintiff, Material Aviation Technologie Navigation filed a Response [ECF No. 42]; to which Defendant filed a Reply [ECF No. 43]. On January 20, 2026, Plaintiff filed a Notice of Supplemental Authority [ECF No. 44] and on February 4, 2026, Defendant filed a Response to Plaintiff's Notice of Supplemental Authority [ECF No. 45]. The Court has considered the parties' written submissions, the record, and applicable law.

I. BACKGROUND

On February 14, 2025, Plaintiff filed its single-count Complaint for breach of contract. (*See generally* Compl. [ECF No. 1]). Plaintiff alleges the parties executed a contract for the Supply of Equipment to the Army Forces of the Democratic Republic of Congo (the "Contract"), under which Plaintiff agreed to refurbish, sell, and deliver seven Bell 212 helicopters to be stored in a warehouse in Miami, Florida, for a total purchase price of $89,756,000. (*See id.* ¶ 26). The Contract required Defendant to make an initial payment by October 30, 2020, which Defendant

failed to do. (*See id.* ¶¶ 26, 29). Defendant's failure prevented Plaintiff from commencing refurbishment, paying its warehouse rent, or performing its contract with its refurbishment partner, ultimately resulting in eviction and the forced sale of the helicopters. (*See id.* ¶¶ 37–38).

Plaintiff filed documentation demonstrating purported compliance with the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. section 1608(a), asserting Defendant was served with process on March 17, 2025. (*See* Notice of Filing Return of Service [ECF No. 12], Comp. Ex. 1 [ECF No. 12-1] 1–2).[1] Defendant failed to appear or respond, and on May 20, 2025, the Clerk entered Default. (*See* Clerk's Default [ECF No. 18]). On June 23, 2025, the Court entered an Order [ECF No. 26] granting Plaintiff's Motion for Entry of Final Default Judgment [ECF No. 25] and entered Final Judgment [ECF No. 27] against Defendant.

Over four months later, on November 18, 2025, attorney Gary Rosen appeared on behalf of Defendant and filed a Motion for Leave to Exceed Page Limits on [a] Motion to Vacate Default and Default Judgment [ECF No. 32]. The Court denied the Motion because Defendant failed to explain why additional pages were necessary. (*See* Nov. 18, 2025 Order [ECF No. 33]). Two weeks later, on December 5, 2025, Defendant filed the present Motion, advancing several reasons why the Court should set aside the Final Default Judgment. (*See generally* Mot.).

Defendant contends that service did not comply with the FSIA, 28 U.S.C. section 1608(a)(3), rendering the Judgment void under Federal Rule of Civil Procedure 60(b)(4) because the Court lacks personal jurisdiction over Defendant. (*See* Mot. 13, 15–19). Alternatively, Defendant seeks vacatur based on excusable neglect under Federal Rule of Civil Procedure 60(b)(1) (*see id.* 19–23); and argues that the "resignation and subsequent corruption conviction of the Minister of Justice[,] as well as the Rwandan rebel military incursion," constitute

[1] The Court uses the pagination generated by the electronic CM/ECF database, which appears in the headers of all court filings.

"extraordinary circumstances" justifying relief under Rule 60(b)(6) (*id.* 24 (alteration added)). Plaintiff insists that service was properly effectuated and that Defendant cannot establish excusable neglect or extraordinary circumstances. (*See generally* Resp.).

The Court does not reach Defendant's arguments concerning Rules 60(b)(1) and 60(b)(6) because it agrees with Defendant that the Judgment is void under Rule 60(b)(4) due to Plaintiff's failure to properly effect service under section 1608(a)(3).

II. LEGAL STANDARD

Federal Rule of Civil Procedure 55(c) allows courts to "set aside a default judgment under Rule 60(b)." *Id.* Rule 60(b) permits a court to relieve a party from a final judgment for certain reasons, including: (1) mistake, inadvertence, surprise, or excusable neglect; (4) a void judgment; or (6) any other reason that justifies relief. *See* Fed. R. Civ. P. 60(b)(1), (4), (6). "[T]here is a strong policy of determining cases on their merits[,] and [courts] therefore view defaults with disfavor." *In re Worldwide Web Sys., Inc.*, 328 F.3d 1291, 1295 (11th Cir. 2003) (alterations added; citations omitted). "But there is also a policy in favor of finality." *S.E.C. v. Simmons*, 241 F. App'x 660, 663 (11th Cir. 2007) (citation and footnote call number omitted).

Rule 60(b)(4). A judgment is deemed void under Rule 60(b)(4) only in narrow circumstances — specifically, when the issuing court lacked jurisdiction, or the court entered judgment in violation of due process. *See Oakes v. Horizon Fin., S.A.*, 259 F.3d 1315, 1319 (11th Cir. 2001) (citation omitted). "[I]nsufficient service of process under Rule 60(b)(4) implicates personal jurisdiction and due process concerns. Generally, where service of process is insufficient, the court has no power to render judgment[,] and the judgment is void." *In re Worldwide Web Sys.*, Inc., 328 F.3d at 1299 (alterations added; citations omitted). Because if service is insufficient an ensuing judgment is void, the Court has no discretion to deny Defendant's Rule 60(b)(4) Motion

to Vacate unless Defendant has waived its right to object to inadequate service. *See Zeron v. C&C Drywall Corp.*, No. 09-60861-Civ, 2020 WL 13420869, at *2 (S.D. Fla. Mar. 16, 2020). Plaintiff does not argue that Defendant has waived its right to object to inadequate service. (*See generally* Resp.).[2]

III. DISCUSSION

As stated, under Rule 60(b)(4), a judgment is void when the issuing court lacked jurisdiction or entered judgment in violation of due process. *See Oakes*, 259 F.3d at 1319. Defendant is a foreign sovereign; thus, the FSIA applies. *See* 28 U.S.C. §§ 1602–1611.

Under the FSIA, "a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in [28 U.S.C.] sections 1605 to 1607." *Id.* § 1604 (alteration added). The statute "compress[es] subject-matter jurisdiction and personal jurisdiction into a single, two-pronged inquiry: (1) whether service of the foreign state was accomplished properly, and (2) whether one of the statutory exceptions to sovereign immunity applies." *Abur v. Republic of Sudan*, 437 F. Supp. 2d 166, 172 (D.D.C. 2006) (citing 28 U.S.C. §§ 1330(a)–(b); other citations omitted).

Defendant challenges only the first prong — whether service was proper. (*See* Mot. 15–19). Section 1608(a) governs service of process on "a foreign state or political subdivision of a foreign state" and sets out a hierarchical order of four methods by which service shall be made. *Id.*; *see also* Fed. R. Civ. P. 4(j)(1). The first method permits service "in accordance with any special arrangement for service between the plaintiff and the foreign state or political

[2] Plaintiff only challenged the timeliness of Defendant's 60(b)(1) argument. (*See* Resp. 6–7). In its Notice of Supplemental Briefing, Plaintiff draws the Court's attention to *Coney Island Auto Parts Unlimited, Inc. v. Burton*, where the Supreme Court determined that "[l]itigants seeking relief under Rule 60(b)(4) must . . . file a motion within a reasonable time." No. 90-345, slip op. at 6 (U.S. Jan. 20, 2026 (alterations added)). Upon review, the Court remains unconvinced that five-and-a-half months do not constitute reasonable time.

subdivision[.]" 28 U.S.C. § 1608(a)(1) (alteration added). "[I]f no special arrangement exists," service may be made by the second method — delivery of a copy of the summons and complaint "in accordance with an applicable international convention on service of judicial documents[.]" *Id.* § 1608(a)(2) (alterations added).

Here, these first two options are unavailable because Plaintiff does not allege a "special arrangement" existed between the parties, Defendant is not a signatory to the Hague Convention, and Plaintiff has identified no other applicable international agreement governing service. (*See generally* Dkt.); *see also* HCCH Members, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, https://www.hcch.net/en/states/hcch-members (last visited Feb. 4, 2026).[3] When service is not possible under either of the first two methods, the third method applies. That method requires a plaintiff to:

> send[] a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned[.]

Id. § 1608(a)(3) (alterations added).

If service cannot be made within 30 days under this method, a fourth method allows service to occur "by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State" for transmittal "through diplomatic channels to the foreign state[.]" *Id.* § 1608(a)(4) (alteration added). After service, a foreign state has 60 days to file a responsive pleading, *see id.* §1608(d), and risks entry of a default judgment if it fails to do so, *see id.* § 1608(e). "Section 1608 mandates strict adherence to its terms, not merely substantial compliance." *Casa Express Corp. as Tr. of Casa Express Trust v. Bolivarian Republic of*

[3] Defendant also does not contend that Plaintiff could have attempted service under the first two methods. (*See generally* Mot.; Reply).

Venezuela, No. 21-mc-23103, 2021 WL 5359721, at *1 (S.D. Fla. Nov. 17, 2021) (alteration adopted; citation and quotation marks omitted).

On May 13, 2025, Plaintiff filed a Notice of Filing Return of Service, stating its service package was addressed to Daniel Makiesse, Director of the Ministerial Cabinet of Defendant's Ministry of Foreign Affairs. (*See* Notice of Filing Return of Service, Ex. 1, Affidavit of Angelina P. Prieto [ECF No. 12-1] 4–6; *see also* Resp. 3). Defendant asserts that Plaintiff addressed the service package to the wrong individual, explaining that Thérèse Kayikwamba Wagner served as Defendant's Minister of Foreign Affairs during the relevant time. (*See* Mot. 3). In support, Defendant includes a Declaration from Gaston Osango, Director of the Cabinet in Defendant's Ministry of Justice, stating that "Thérèse Kayikwamba Wagner, the Minister of Foreign Affairs of the Democratic Republic of Congo, has been the head of the Ministry of Foreign Affairs . . . continuously since July 2024." (Reply, Ex. 1, Declaration of Gaston Osango [ECF No. 43-1] 24 (alteration added)).[4]

Plaintiff does not dispute that Wagner is the Minister of Foreign Affairs and concedes it served Makiesse rather than Wagner. (*See generally* Resp.). Plaintiff nevertheless contends that the language of section 1608(a)(3) is sufficiently vague to permit service on Makiesse as the "head of the ministry of foreign affairs." (Resp. 3).

The question before the Court, therefore, is the meaning of "head of the ministry of foreign affairs" under section 1608(a)(3). In interpreting that provision, the Court "begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). The most natural reading of this language — and the reading

[4] Osango's Declaration was originally filed as an exhibit to Defendant's Motion (*see* [ECF No. 37-56]), and is also attached as an exhibit to Defendant's Reply (*see* Reply 9 n.3).

supported by caselaw — is that service must be directed to the foreign minister or the functional equivalent of that position. *See Republic of Sudan v. Harrison*, 587 U.S. 1 (2019) (serving the Republic of Sudan's foreign minister); *O'Bryan v. Holy See*, 490 F. Supp. 2d 826, 831 (W.D. Ky. 2005) (stating package should have been addressed to "the Holy See's Secretary of the Section for Relations with States (the equivalent of a foreign minister)"). Even Plaintiff's "vagueness" argument supports this understanding. (*See* Resp. 4 ("Congress used vague language to describe which person needed to be served because different countries are organized differently and use different names to describe their ministry of foreign affairs.")).

Plaintiff does not argue that Defendant lacks a foreign minister, nor does it dispute that Wagner occupies that role. (*See generally id.*). Instead, Plaintiff relies on dictionary definitions of "head" and a governmental decree describing the organization of Defendant's ministries to argue that Makiesse qualifies as the Ministry's leader. (*See id.* 4–5; *see generally id.*, Ex. 1, Decree No. 22/10 of 4 March 2022 on the Organization and Functioning of Ministerial Cabinets "Decree No. 22/10" [ECF No. 42-1]).

The Decree does not support Plaintiff's argument. Article I of the Decree provides that "Ministers . . . shall be assisted in the exercise of their functions by a Ministerial Cabinet[;]" and Article II explains that "Ministerial Cabinets shall work in close collaboration with the administration, services, and public bodies placed under the authority or supervision of the concerned Minister." (Decree No. 22/10 10 (alterations added)). Article IV confirms that Makiesse, as Director of the Ministerial Cabinet, is a member of the Ministerial Cabinet. (*See id.*). Although Makiesse supervises subordinates, the Decree states that his role is to assist the Minister of Foreign Affairs — not serve as head of the Ministry. (*See id.*). With this background, the Court

agrees with Defendant that the head of Defendant's Foreign Ministry is Thérèse Kayikwamba Wagner, the Minister of Foreign Affairs of the Democratic Republic of Congo.

Plaintiff's argument that "[r]eopening the judgment would inflict severe and irreparable prejudice on [Plaintiff]" is unavailing. (Resp. 7 (alterations added)). While the Court understands Plaintiff's frustration with being "knocked back to square one" (*id.*) — particularly given Defendant's awareness of the action since at least April 28, 2025 (*see id.*, Ex. 3, Letter to the Prime Minister [ECF No. 42-3] 1–2) — "there are circumstances in which the rule of law demands adherence to strict requirements even when the equities of a particular case may seem to point in the opposite direction[,]" *Republic of Sudan*, 587 U.S. at 19 (alteration added). Section 1608(a)(3)'s service provisions, which implicate sensitive diplomatic concerns, require strict compliance. *See id.*; *see also Casa Express Corp.*, 2021 WL 5359721, at *1.

In sum, section 1608(a)(3) required Plaintiff to serve Defendant's Minister of Foreign Affairs, Thérèse Kayikwamba Wagner. Because Plaintiff failed to do so, service was insufficient, and the Judgment is void. *See In re Worldwide Web Sys., Inc.*, 328 F.3d at 1299.

Accordingly, it is

ORDERED AND ADJUDGED as follows:

1. Defendant, Democratic Republic of the Congo's Motion to Vacate Default and Default Judgment **[ECF No. 37]** is **GRANTED**.

2. The Orders granting Plaintiff, Material Aviation Technologie Navigation's Motion for Final Default Judgment **[ECF No. 26]** and granting Final Default Judgment **[ECF No. 27]** entered on June 23, 2025, are **SET ASIDE**.

3. When Plaintiff files proof of service on Defendant, the Court will reopen the case on motion by Plaintiff. Any motion to reopen must be accompanied by a joint, proposed scheduling report.

DONE AND ORDERED in Miami, Florida, this 5th day of February, 2026.

CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE

cc: counsel of record