



REPUBLIC OF KENYA



**Jepkemboi v Songok (Family Cause 11 of 2023)
[2024] KEHC 13214 (KLR) (Family) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13214 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
FAMILY
FAMILY CAUSE 11 OF 2023
HK CHEMITEI, J
OCTOBER 31, 2024**

BETWEEN

MONICA JEPKEMBOI PLAINTIFF

AND

WILLIAM KIPKOSGEI SONGOK DEFENDANT

RULING

1. By her Originating summons dated 17th August 2023 the Applicant seeks orders that;
 - (a) The court be pleased to register and adopt the judgement issued by the 1st Judicial District Court, Shereport, Caddo Parish Louisiana us in Docket No. 626890E for enforcement and execution.
2. The Applicant prayed for costs of the application.
3. The Respondent on the other hand filed a preliminary objection on a point of law that:-
 - (a) The suit violates the express provisions of the order under Section 13 of the Foreign Judgements (Reciprocal Enforcement) Act Cap 43 laws of Kenya.
 - (b) The court does not have jurisdiction to entertain the suit.
4. The court directed the said preliminary objection to be heard by way of written submissions. The parties have complied and filed the same with various cited authorities.
5. The Applicant in his submissions argued that Section 13 of Cap 43 prohibits this court from adopting and enforcing the same as the United States of America does not form part of those countries recognized under the Act. He relied on the case of re AVK (2021) eKLR.



6. On the issue of jurisdiction, the Respondent argued that based on the above fact that the United States has no reciprocity with Kenya then this court ought to down its tools. He cited the famous case of “Lilian S.v. Caltex oil Kenya (1989) KLR.”
7. The Applicant vehemently opposed the preliminary objection through the submissions dated 17th September 2024. The Applicant cited several authorities as well as Article 165 of *the Constitution* which gives this court unlimited powers to deal with any matter before it.
8. She went on to cite the Children’s Act and submitted that the interest of the children in this case overrides everything as the same was paramount. In effect, all that the Applicant was attempting to do was to pursue the interest of their three children with the Respondent.
9. Further that the Respondent in reliance on the decree dissolving their marriage in the United States of America has gone ahead to remarry which in essence cannot permit him to deny the said decree. In effect he cannot use the decree selectively.
10. According to the Applicant the *Marriage Act* permits adoption of the foreign decrees in Kenya and there is no reason why the court cannot allow the same herein.

Analysis and determination

11. This court has perused the matter herein extensively and the provisions of Section 2 of the Schedule to Cap 43 which states;

“The countries specified in the Schedule are declared to be reciprocating countries for the purposes of the Act and the Act shall apply with respect to judgments given by superior courts of those countries.

SCHEDULE...”
12. Then it goes on to mention several countries minus the United States of America.
13. I have also seen the persuasive decisions of my brothers in almost similar circumstances although some of them could be distinguished.
14. In my view therefore I find that the only logical way to find a better solution to this matter is to hear the parties. I state so because looking at the history of the matter it will not be efficacious to determine by way of a preliminary objection or a mere ruling to adopt the foreign judgement or decree. The parties ought to be subjected to oral evidence. There is also need to interrogate the documentary evidence they each possess.
15. It is of course on the face of it easy to conclude the same as an open and shut case, but considering that it applies to the children largely and not the parents, this court is persuaded to hear the parties.
16. Consequently, I decline the preliminary objection and direct that:-
 - (a) The matter be fixed for full trial on priority basis.
 - (b) The parties granted leave to file and serve each other with further witness statements or affidavits if any within 30 days from the date herein.
 - (c) Costs shall await the outcome of the suit.

DATED SIGNED AND DELIVERED AT NAIROBI VIA VIDEO LINK THIS 31ST DAY OF OCTOBER 2024.



H K CHEMITEI
JUDGE.

