



REPUBLIC OF KENYA



KENYA LAW
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**Benson v Owere & another (Petition E001 of 2022)
[2023] KEHC 22824 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22824 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
PETITION E001 OF 2022
WM MUSYOKA, J
SEPTEMBER 28, 2023**

BETWEEN

TAABU BENSON PETITIONER

AND

OTIENO FRANSIC OWERE 1ST RESPONDENT

MANGENI OSIYO KENEDY 2ND RESPONDENT

RULING

1. This is a straightforward application for registration of a foreign judgment, in the High Court, obtained in Busia (Uganda) CMCCC No 36 of 2019, on June 21, 2019, in favour of the petitioner and against the respondents, for Ushs 28,970,000.00, being the equivalent of Kshs 783,000.00, plus costs and interests. It is premised on sections 5 and 6 of the *Foreign Judgments (Reciprocal Enforcement) Act*, Cap 43, Laws of Kenya, and the *Civil Procedure Act*, Cap 21, Laws of Kenya.
2. Under the *Foreign Judgments (Reciprocal Enforcement) Act*, a foreign judgment, from the court of a designated country, may be registered at the High Court of Kenya, for the purposes of being executed like a judgment made by the High Court of Kenya. Uganda, from where the judgment sought to be registered was rendered, is one of the designated countries under the *Foreign Judgments (Reciprocal Enforcement) Act*. The foreign courts, whose judgments are sought to be registered, should be either a superior court of the designated country, or of subordinate courts of those designated countries, in accordance with section 13(3) of the *Foreign Judgments (Reciprocal Enforcement) Act*.
3. The judgment sought to be registered herein is not of a superior court in Uganda, but of a subordinate court. For that judgment to be registered, it has to be demonstrated that section 13(3) of the *Act* has been complied with, in terms of the Minister extending the reciprocal enforcement of a judgment of a Ugandan subordinate court in Kenya. The petitioner has not sought to demonstrate that there are reciprocal arrangements under section 13(3) of the *Act*, with respect to enforceability of decrees of



Ugandan subordinate courts in Kenya. I have perused the Act, and noted that there was extension of such reciprocal enforcement, under section 13, to decrees of Ugandan subordinate courts in Kenya, through Legal Notice Number 135 of 1984, and, therefore, the petitioner could properly move the High Court in Kenya for such registration.

4. The petition is opposed. The 1st respondent filed an affidavit in opposition, sworn on June 3, 2022. The arguments are that the petition is incompetent, as it is brought by way of petition rather than the originating summons contemplated under the Act and the relevant Rules. The other arguments are that the court process relating to the Ugandan suit were not served, and the proceedings ought to have been conducted in Kenya, not in Uganda.
5. I will start with the issue of the pleadings. It is true and correct that the proper pleadings to file should have been the originating summons, as that is what is prescribed under the Act and the Rules. Was the filing of the petition fatal to the claim? I do not think so. These are civil proceedings, falling under the *Civil Procedure Act*. Sections 1A, 1B, 1C and 3A of the *Civil Procedure Act* would apply, with respect to giving primacy to substantive justice, as opposed to upholding technicalities of procedure. These provisions have to be read together with Article 159 of *the Constitution*, which is of the same effect. There can be no confusion, that the petition herein is founded on the *Foreign Judgments (Reciprocal Enforcement) Act*, and that it seeks registration of a judgment of a foreign court for purposes of execution. The use of a procedure other than that prescribed does not go to the heart of the matter.
6. Regarding service and jurisdiction, the courts have generally been reluctant to decline registration of, or to set aside, foreign judgments, principally as the foreign courts would have usually exerted themselves on matters of facts, law and procedure before rendering judgment. Rather than pass judgment on a matter that the Kenyan court was not seized of at first instance, the court would prefer that the respondent move the court, which pronounced the judgment, to have it address its concerns. See *Dari Limited & 5 others v East African Development Bank* [2023] KECA 454 (KLR) (M’Inoti, Laibuta & Gachoka, JJA).
7. There is material, in the documents, filed by the petitioner, demonstrating that the 2nd respondent, who is Ugandan, filed process in Busia (Uganda) CMCCC No 36 of 2019, being a Motion, dated April 30, 2019, which was considered in the ruling of the court of 21st June 2019. The 1st respondent was served with court process, as evidenced by the affidavit of service on record, sworn on May 7, 2019. The respondents have not placed, in the record before me, any material to demonstrate that the Ugandan subordinate court lacked jurisdiction to handle the dispute. The allegation, in the plaint, was that the money, the subject of the suit, was given to the 1st respondent in Busia, Uganda, and he was to buy rice in Kenya, to deliver to the petitioner at Busia, Uganda.
8. In the end, I find merit in the petition herein, dated February 21, 2022, and I accordingly allow it. It is hereby decreed that the judgment of HW Agwero Catherine, Chief Magistrate, delivered on June 21, 2019, in Busia (Uganda) CMCCC No 36 of 2019, be registered at the High Court of Kenya. The petitioner shall have the costs of these proceedings.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT BUSIA THIS 28TH DAY OF SEPTEMBER 2023

W. MUSYOKA

JUDGE

