



IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. E554 OF 2020

IN THE MATTER OF THE

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT

BETWEEN

KADERE PEASANTS DEVELOPMENT (PUBLIC LIMITED COMPANY) PLC.....PLAINTIFF

AND

BRAZAFRIC ENTERPRISES LIMITEDDEFENDANT

RULING

1. The Originating Summons before the Court is dated 22nd December 2020 made under **section 5** of the *Foreign Judgments (Reciprocal Enforcement) Act (Chapter 43 of the Laws of Kenya)* (“the Act”). In the summons, the Plaintiff seeks the following main order:

[1] THAT this Honourable Court be pleased to register the Judgment issued by the High Court of the United Republic of Tanzania at Mwanza (Commercial Division) in Commercial Case No. 3 of 2014 for the purpose of enforcement.

2. The summons is supported by the affidavit of the Plaintiff’s Managing Director, Leonard Faustin Kachebonaho, sworn on 22nd December 2020. The deposition shows that the Defendant is a judgment debtor following determination by the courts in the United Republic of Tanzania (“Tanzania”) and that to date the Defendant has not satisfied the judgment adjudicated by those courts.

3. On 3rd April 2013, Plaintiff herein filed suit against the Defendant at the High Court of the United Republic of Tanzania, Commercial Division at Mwanza; **Commercial Case No. 03 of 2014, Kaderes Peasants Development PLC v Brazaftric Enterprises Ltd** claiming, inter alia, damages for breach of contract. On 3rd June 2016, the court entered default judgment upon failure of the Defendant to file its Statement of Defence despite service of summons upon it.

4. According to the proceedings, the Defendant filed an application to set aside the judgment by the same was dismissed on 5th September 2014. It filed an appeal in the Court of Appeal, Tanzania; Civil Appeal No. 123 of 2014 but the appeal was struck out on 11th December 2015. The Defendant successfully applied for extension of time to appeal but failed to file the Notice of Appeal. Its application to seek extension was struck out on 1st November 2018 and the subsequent application to the Court of Appeal, Tanzania; Civil Application No. 32 of 2018 was struck out on 9th October 2019. On 13th November 2020, the High Court approved the Forms necessary for the Plaintiff to execute the judgment in Kenya.

5. The Summons is supported by duly certified copy of the Judgment and proceedings of the High Court of the United Republic of Tanzania, Mwanza Commercial Division, Commercial Case No. 3 of 2014. It is accompanied by Certificate issued under **section 5(4)** of the *Act* confirming that the Defendant made personal appearance through its Principal Officer but never filed a defence, that there was a right of appeal and the appeal instituted in the Court of Appeal, Tanzania was struck out, that there is no appeal pending and that the time for lodging such appeal has now expired. The Plaintiff has also provided certified copies of proceedings to support its case.

6. Based on all the evidence submitted, I am satisfied that the Defendant duly participated in the proceedings before the courts Tanzania hence this summons may be heard ex-parte.

7. As the Plaintiff has complied with the *Foreign Judgment (Reciprocal Enforcement) Rules* and noting that the United Republic of Tanzania is one of the reciprocating countries under **section 13** of the *Act*, I allow the summons dated 22nd December 2020 and order as

follows:

- (a) THAT the judgment issued by the **High Court of the United Republic of Tanzania at Mwanza (Commercial Division) in Commercial Case No. 3 of 2014** be and is hereby registered.
- (b) THAT notice of registration of the judgment do issue and the same shall be served upon the Defendant.
- (c) The Defendant shall bear costs of the application.

DATED and **DELIVERED** at **NAIROBI** this 25th day of **JANUARY**, 2021.

DAVID S. MAJANJA

JUDGE

Court Assistant: Mr. M. Onyango

Ms Kitonga instructed by S. M. Kitonga and Company Advocates for the Plaintiff.