



REPUBLIC OF KENYA



**KENYA LAW**  
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**CTM Uganda Limited v Owala (Miscellaneous Case E027 of 2021) [2021]  
KEHC 47 (KLR) (Commercial and Tax) (24 September 2021) (Ruling)**

Neutral citation: [2021] KEHC 47 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CASE E027 OF 2021  
DAS MAJANJA, J  
SEPTEMBER 24, 2021  
IN THE MATTER OF THE  
FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT**

**BETWEEN**

**CTM UGANDA LIMITED ..... APPLICANT**

**AND**

**ELIAKIM OWALA ..... RESPONDENT**

**RULING**

1. On 19<sup>th</sup> March 2021, I allowed the application for registration of a foreign judgment on the following terms:
  - (a) THAT leave be and hereby granted to the Judgment Creditor to register in the High Court of Kenya the Judgment issued on 20<sup>th</sup> March 2020 at the High Court of Uganda Holden at Kampala (Commercial Division) obtained in Civil Suit No. 455 of 2018 (CTM Uganda Limited v Eliakim Owala).
  - (b) THAT execution of the said Judgment do issue upon service of the Notice of Registration of Judgment on the Judgment Debtor.
  - (c) THAT the costs of this Originating Summons be borne by the Respondent.
2. After the judgment was entered, the Respondent moved the court by the application dated 28<sup>th</sup> May 2021 seeking, inter alia, to set aside the registration and for stay of execution. When the parties appeared before me on 4<sup>th</sup> June 2021, I granted an order of stay pending hearing and determination of the application on condition that the Respondent deposit KES. 1,000,000.00 in court on or before 30<sup>th</sup>



June 2021. The matter came up for hearing once again 1<sup>st</sup> July 2021, the parties agreed by consent to extend the time for compliance with the order for deposit by 29<sup>th</sup> July 2021. On 29<sup>th</sup> July 2021, the parties once again appeared before the court and I directed that the Respondent comply with the order for deposit within 21 days in default of which the order would lapse.

3. I am now asked to review and or set aside the conditional order for stay because the High Court in Uganda has stayed execution pending hearing and determination of the application to set aside the judgment in Uganda. The Defendant also states that his health condition has deteriorated and he is unable to raise the money ordered. The application is opposed by the Respondent.
4. The main issue for determination is whether the Registration Order and all consequential orders should be set aside in which case the order for stay would automatically collapse. The provisions of law germane to the determination of the application are sections 2, 10 and 11 of the *Foreign Judgments (Reciprocal Enforcement) Act* (“the Act”) which provides, in part, as follows:
  2. For the purposes of this Act—

“appeal” means proceedings by way of application for the discharge or setting aside of a judgment or for a new trial or a stay of execution;
  10. Setting aside
    - (1) Where a judgment has been registered under this Act an application may be made by the judgment debtor that the judgment be set aside on any of the grounds set out in subsection (2) or (3), and if the High Court is satisfied that any of those grounds has been established it shall set aside the registration of the judgment.
    - (2) The grounds upon which a registered judgment may be set aside are that—
      - (k) the judgment has been taken on appeal, and reversed or discharged or otherwise set aside, in a court of the country of the original court;
  11. Effect of appeals, etc.
    - (1) An application may be made by or on behalf of the judgment debtor to set aside the registration of a judgment on the ground that—
      - (a) an appeal is pending against the judgment; or
      - (b) he is entitled and intends to appeal against the judgment; or
      - (c) the matter in relation to which the judgment was given is the same as that in respect of which proceedings, instituted prior to the institution of the proceedings in the original court, are pending in a court in Kenya.
    - (2) Where the High Court is satisfied that the grounds specified in subsection (1)(a) or (b) are established, it may, on such terms as it thinks just, set aside the registration or adjourn the application until the expiration of such period as appears to the High Court to be reasonably sufficient to enable the proceedings, and any appeal therefrom to a competent tribunal, to be disposed of. [Emphasis mine]
5. A reading of section 10(2)(k) of the Act, shows that the court must set aside a registered judgment which has been taken on appeal and has been reversed or set aside by the court of the original country. Section 11 of the Act however applies to a case where there are pending proceedings in the foreign court in relation to the registered judgment. Under section 2 of the Act, an application to set aside



the judgment in the foreign court such as the one filed by the Applicants falls within the meaning of “appeal” as it is a, ‘proceedings by way of application for the discharge or setting aside of a judgment or for a new trial or a stay of execution’.

6. Since there is an application for setting aside the judgment in the court in Uganda, which may or may not be set aside, the court under section 11 of the Act, the court may adjourn the application to set aside on such terms as it thinks fit. The court is therefore within its power to adjourn the application to set aside judgment on the conditions it has already imposed.
7. As to whether the court should vary the orders of stay imposed, the Plaintiff states he was unwell and needed time to deposit the amount ordered. In the application dated 28<sup>th</sup> June 2021 by the Respondent is made, inter alia, under Order 45 of the Civil Procedure Rules and it seeks the following orders:
  1. Spent
  2. Spent
  3. THAT the Honourable Court be pleased to review or vary terms of the orders delivered on 04.06.2021, upon determining new material facts tendered.
  4. THAT the Honourable Court be pleased to extend the period within which the Applicant is to deposit in Court the sum of Kshs. 1,000,000.00 by 60 days.
  5. Costs be provided for.
8. From the prayers I have set out above, it is implicit that the Respondent seeks time to deposit the sum of KES. 1,000,000.00. In fact, in his deposition at para. 13 sworn on 28<sup>th</sup> June 2021, the Respondent states that had his Advocates known of his medical tribulations, they would have persuaded the court to give a longer period. This is also confirmed by the fact that the Respondent acceded to the extension of time by consent. Clearly what he seeks is time. According to the Applicant, he has been accorded sufficient time to comply.
9. In conclusion, I hold that since there is an application by the Respondent seeking to set aside the judgment of the court in Uganda, under section 11 of the Act I may decline to set aside this judgment until the matter in Uganda is concluded one way or another. I also have the discretion to impose such terms as are just pending the hearing and determination to set aside the judgment.
10. In the interest of justice, I reduce the amount of KES. 1,000,000.00 to KES. 500,000.00 be deposited in court within 30 days from the date hereof in default of which the stay orders shall lapse.

**SIGNED AT NAIROBI**

**D. S. MAJANJA**

**JUDGE**

**DATED and DELIVERED at NAIROBI this 24<sup>th</sup> day of SEPTEMBER 2021**

**A. MABEYA**

**JUDGE**

Court Assistant: Mr. M. Onyango

Mr Anzala instructed by Henia Anzala and Associates Advocates for the Applicant.

Mr Gichaba instructed by Gichaba and Company Advocates for the Respondent.

