

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MIS. APPLICATION 101 OF 2014 (OS)

A Z U.....APPLICANT

VERSUS

Z U M.....RESPONDENT

RULING

1. The application dated 29th May 2014 seeks adoption of a foreign judgment delivered on 4th August 2010 by a court in Tanzania in the District Court of Ilala District at Samora Avenue, Tanzania in Matrimonial Cause No.24 of 2010, and for specific orders that the marriage between the parties be dissolved, custody of the minors be given to the mother, the respondent be responsible for the maintenance of the children of the marriage at the rate of USD 250 and the respondent be allowed to access the minor issues of the marriage.
2. The grounds and reasons on which the application is premised are set out in the face of the application and on the affidavit of the applicant. The Tanzanian court dissolved the marriage between the parties and awarded custody of the children of the marriage to the applicant. It had also been ordered that the respondent pay maintenance for the children at the rate of USD 250. The respondent was also awarded access rights to the children. The Tanzanian decree is the second divorce order for on 7th April 2010 the same marriage had been dissolved by a Dubai Court.
3. The judgment sought to be adopted was issued by a foreign court. Enforcement of foreign judgments is provided for under the Foreign Judgments (Reciprocal Enforcement) Act, Cap 43, Laws of Kenya. The application dated 29th May 2014 is itself expressed as brought under Section 3 of the Foreign Judgments (Reciprocal Enforcement) Act.
4. Section 3 of the Foreign Judgment (Reciprocal Enforcement) Act lists both the judgments to which it applies and the judgments it does not apply to.
5. The judgments to which the Act applies are set out in Section 3(1) of the Act. The Judgments listed under this provision does not include judgments relating to matrimonial causes, custody and maintenance of children.
6. **Section 3(3)** of the Act sets out judgments in respect of which the Act does not apply. It lists at paragraphs (c), (d) and (e) judgments in respect of periodical payment of money as maintenance of a spouse or a child or other person dependent the person against whom the order was made, judgments in matrimonial causes or matters, and judgments in proceedings in connection with the custody or guardianship of children.
7. The judgment sought to be adopted for enforcement is a foreign judgment which falls under **Section 3(3)** (c) (d) and (e) of the foreign judgments (Reciprocal Enforcement) Act. It follows that the Act does not apply to the said judgment and the same is therefore not available for adoption and enforcement by the court under the said Act.
8. The application dated 29th May 2014 is consequently misconceived. It is available for dismissal and I hereby dismiss the same. There shall be no order as to costs.

DATED, SIGNED and DELIVERED at NAIROBI this 30th DAY OF January 2015.

W. MUSYOKA

JUDGE