



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

MISC. APPLICATION CASE NO. 389 OF 2006

**IN THE MATTER OF FOREIGN JUDGMENTS (RECIPROCAL
ENFORCEMENTS) ACT, CHAPTER 43 OF THE LAWS OF KENYA**

AND

**IN THE MATTER OF JUDGMENT/ORDER OF THE SUPREME COURT
OF RWANDA AT KIGALI CASE NO. RCAA 0012/04/CS**

INNOCENT MUSHEJA.....1ST APPLICANT

TWAHIRWA JEAN BOSCO.....2ND APPLICANT

VERSUS

MARSHALL FOWLER ENGINEERING LIMITED.....RESPONDENT

AND

**IN THE MATTER OF AN APPLICATION FOR THE REGISTRATION OF THE
JUDGMENT/ORDER OF THE SUPREME COURT OF RWANDA AT KIGALI (CASE NO.
RCAA 0012/04/CS) ISSUED ON 1ST DAY OF SEPTEMBER 2005, BY THE HONOURABLE
JUSTICES MUTSINZI JEAN, HAVUGIMANA JULIEN AND MUKANYUNDO PATRICIA**

BETWEEN

MARSHALL FOWLER ENGINEERING LIMITED.....RESPONDENT

VERSUS

INNOCENT MUSHEJA.....1ST APPLICANT

TWAHIRWA JEAN BOSCO.....2ND APPLICANT

AND

**BANK OF COMMERCE DEVELOPMENT
AND INDUSTRIES (B.C.D.I).....VOLUNTARY INTERVENER**

RULING

INTRODUCTION

1. The Applicants herein and the Voluntary intervener had sought to register and enforce the Judgment of the Supreme Court of Rwanda issued on 1st September 2005, vide their two similar applications by way of Originating Summons and filed in different files. The parties herein agreed to consolidate the applications and proceeded with the hearing of the Originating summons in Miscellaneous Civil Application No. 389 of 2006 with a view that the outcome would apply to Miscellaneous Civil Application No. 854 of 2006.

2. This Court entered Judgment in favour of the Applicants on 30th May 2014. However, the parties have not managed to extract the Decree owing to their different interpretation on certain aspects of the said Judgment. As a result, the parties approached this Court for interpretation of the said Judgment which in essence registered the foreign Judgment from the Supreme Court of Rwanda.

THE SUBMISSIONS

3. The Court directed the parties to file written submissions on the issues that they could not agree on in the Judgment. The Respondent filed its submissions dated 15th April 2015 on 16th April 2015 while the Applicants filed their submissions dated 11th May 2015 on even date. The parties highlighted their submissions on 8th June 2015. From the highlighting of the submissions the parties agreed that there were two issues to be determined with regard to the interpretation of the Judgment of 30th May 2014 as follows:-

- *the prayers awarded and in particular paragraphs 22 and 24 of the Judgment*
- *the applicable interest rate on the decretal sum and the period from which it should run.*

4. On the first issue, it is the Respondent's submission that there seems to be a contradiction in paragraphs 22 and 24 of the Judgment. The Applicants are of a contrary opinion and maintain that the Judgment is clear especially at paragraph 22 and 24.

5. In the said paragraph 22, this Court rejected the submission by the Respondent that the Judgment of the Supreme Court of Rwanda dated 1st September 2005 contained charges of a nature similar to taxes and or orders in respect of a penalty or a fine or orders of punitive measure against the provisions of Section 3 (3) (b) of the Foreign Judgments (Reciprocal Enforcement) Act (herein Cap. 43). The Court's reasoning was that the Applicant in the supporting affidavit of **Twahirwa Jean Bosco** sworn on **12th May 2006** at paragraph 15 had stated the parts of the Judgment they sought to register and enforce. The Court further held that those parts of the Judgment were not exempted under the said Section 3 (3) (b) of cap. 43.

6. Subsequently at paragraph 24, the last paragraph of the said Judgment, the Court allowed the Plaintiff's Originating summons dated 12th May 2006 as prayed with costs to it. The main prayer in the said application was for the registration and enforcement of the Judgment of the Supreme Court of Rwanda dated 1st September 2005 and that is what the Court granted. I therefore see no contradiction in paragraphs 22 and 24 of this Court's judgment as alluded to by the Respondent.

7. To this end and for purposes of clarity, the application of the Applicants dated 12th May 2006 as allowed by the Court was restricted to the parts of the Judgment which the Applicants sought to register and enforce. The Applicant indicated the parts of the Judgment of the Supreme Court that it sought to

enforce at paragraph 15 of the affidavit of Twahirwa Jean Bosco as follows:-

- ***That Marshall Fowler Engineers Limited to pay Musheja Innocent and Twahirwa Jean Bosco FRW 51,363,161 as the principal debt.***
- ***That Marshall Fowler Engineers Limited to pay to Musheja Innocent Twahirwa FRW 1,000,000 for Court Procedures.***
- ***That Marshall Fowler Engineers Limited to pay the sum of FRW 14,500 in respect of Court fees disbursements.***

8. It is also worthy to note that the parties herein had agreed to proceed with the hearing of the said application dated 12th May 2006 with a view that the outcome would apply to the similar application by the Bank dated 18th August 2006. In the said application, the Bank indicated the parts of the Judgment of the Supreme Court that it sought to enforce at paragraph 18 of the affidavit of Emmanuel Muragijimana as follows:-

- ***That Marshall Fowler Engineers Limited to pay Bank of Commerce Development and Industries in the place of Musheja Innocent and Twahirwa Jean Bosco the debt equivalent to FRW 89,194,116 as demanded as at 1st May, 2005.***
- ***That Marshall Fowler Engineers Limited to pay costs/charges to Bank of Commerce Development and Industries 4% of 89,194,116 Rwandan Francs that is to say FRW 3,567,767 to the Rwandan Government.***
- ***That Marshall Fowler Engineers Limited to pay Bank of Commerce Development and Industries FRW 2,000,000 for Court procedures.***

9. Therefore, ideally when the Court allowed the Applicants' Originating Summons applications as prayed, it enforced the parts of the Judgment as stated above in the respective affidavits. In that case, the parties should have drafted their decrees to conform to parts of the Judgment stated above. However, the parties have been unable to extract the Decree as earlier stated owing to their different interpretation on certain aspects of the Judgment. It was the Respondent's contention that items (v) and (vi) captured in the Applicant's Draft Decree were clearly not due to them but to the Rwandan Government. In the said items, the Respondent was required to pay FRW 2,054,526 and FRW 3,567,767 respectively to the Rwandan Government. According to the Respondent the costs due to the Government were further barred by section 3 (3) (a) (b) and (h) of the Foreign Judgments (Reciprocal Enforcement) Act. On the Applicant's part it maintained that the Court's Judgment was clear and what the Respondent sought was a review of the same.

10. Section 3 (3) (a) (b) and (h) of Cap. 43 provides as follows:-

“(3) This Act does not apply to a judgment or order-

a. Whereby a sum of money Is payable or an item of movable property is deliverable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty;

b. To the extent to which it provides for the payment of a sum of money by way of exemplary, punitive or multiple damages;

c. ...

d. ...

e. ...

f. ...

g. ...

h. in a matter of social security or public assistance whereby a sum of money is payable by or to a public authority or fund;

11. With regard to Section 3 (3) (a) and (b) this Court at paragraph 22 of its judgment dated 30th May 2014 was clear when it rejected the Respondent's argument that the Judgment of the Supreme Court of Rwanda dated 1st September 2005 contained charges of a nature similar to taxes and or orders in respect of a penalty or a fine or orders of punitive measure. As for sub section (h), there is nothing to indicate that the matter between the parties herein had anything to do with social security or public assistance. Therefore the Respondent's argument that the monies payable to the Rwandan Government is barred by the aforesaid sections cannot stand.

12. This Court reiterates that the Applications were allowed as prayed which means that the parts of the Judgment as indicated in the respective affidavits were enforced. Notably, the parts of the judgment referred to by the Applicants were in essence the entire judgment of the Supreme Court of Rwanda. In that case, it is plain that the Judgment of this Court of 30th May 2014 registered and enforced the Judgment of the Supreme Court of Rwanda as is. In any case the orders requiring the Respondent to pay the specified amount of money to the Rwandan Government even if included in the Decree will not benefit the Applicants. The fact remains that the said money is due to the Rwandan Government and not the Applicants.

13. The second issue was that of interest. This Court notes that the Judgment of 30th May 2014 was silent on the issue of interest, that is, as to when interest begins to run and at what rate. On the issue of interest, the Respondent's submission was that the same was payable from the date of the Courts judgment which is 30th May 2014. It referred the Court to section 8(2) (b) of Cap 43. Section 8 (2) (b) states that interest is payable from the date of registration of the Judgment. The Respondent noted that the applications to register the Rwandan Judgment in Kenya was filed in 2006 and decided on 30th May 2014. It was its contention that the Respondent was not to be entirely blamed for the rigours of Kenyan justice system with the attendant delays and backlog. Therefore, the Respondent was opposed to the Applicant's view that interest was to run from 1st September 2005 when the Rwandan judgment was delivered. I have perused Section 8 of Cap. 43 on the effect of registration and in particular subsection 2 which provides as follows:-

“Subject to this Act, where a judgment for the payment of any monetary sum is registered, the following sums may be recovered upon the registered judgment—

a. the amount remaining payable under the judgment, including interest and any costs awarded to the judgment creditor, at the date of registration;

b. interest from the date of registration on that amount, excluding interest and costs referred to in paragraph (a), calculated at the rate applicable to a judgment of the High Court;...”

Clearly, there are two regimes of interest.

i. Under paragraph (a), the sum due is the amount remaining payable under the (Rwandan) judgement including interest at costs at the date of registration. This is calculated at the rate which was given by the Rwandan court.

ii. Under paragraph (b,) the sum due at the time of registration, excluding the aforesaid interests and costs referred to in (a) above, now calculated at the court rate being 12%.

So clearly, interest runs from the date of registration, but after calculating costs and interest on the amount

awarded by the Rwandan court in its judgment under reference.

DISPOSITION

14. In view of the foregoing, this Court has said enough to clarify its Judgment of 30th May 2014. The draft decree of the Applicant as attached to the Respondent's submissions conforms to the Judgment of the Supreme Court of Rwanda save for item (ix) on interest which this Court has set at 12% running from 30th May 2014. As for the draft decree of the Respondent, the same only addresses a part of the Judgment as indicated in the application dated 12th May 2006 without factoring in the application of 18th August 2006. Therefore the same is not complete and should be amended to include the parts of the judgment as indicated in the said application dated 18th August 2006.

It is so ordered.

READ, DELIVERED AND DATED AT NAIROBI THIS 31ST DAY OF JULY 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Abitha for the Applicant

Mr. Malungu holding brief for Kibichu for the Respondent

Teresia – Court Clerk