



**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**FAMILY DIVISION**

**MISCELLANEOUS APPLICATION NO. 158 OF 2015**

**IN THE MATTER OF: FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT**

**AND**

**IN THE MATTER OF: AN APPLICATION FOR REGISTRATION OF AN ORDER OF THE  
FAMILY COURT OF ENGLAND AND WALES OF 8<sup>TH</sup> JANUARY 2015 OBTAINED IN CASE  
NUMBER OX14P000454**

**AND**

**IN THE MATTER OF : R.M.K (A MINOR)**

**AND**

**IN THE MATTER OF: ARTICLE 53 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF: SECTIONS 4,22 AND 113 OF THE CHILDREN ACT 2001**

**BETWEEN**

**L.W.K.....APPLICANT**

**AND**

**B.P.K.....RESPONDENT**

**RULING**

1. The application before this court has been brought under rules 2 and 3 of the Foreign Judgments ( Reciprocal Enforcement ) Rules , Section 5 of the Foreign Judgments ( Reciprocal Enforcement ) Act Cap. 43 Laws of Kenya , the Inherent Power of the Court. The applicant is seeking the following orders that;
  - i. The order given in **Case Number OX14P00245** by the Family Court at Oxford on the **8<sup>th</sup> day of**

- January 2015** be registered pursuant to the Foreign Judgment ( Reciprocal Enforcement) Act.
- ii. The applicant be permitted to remove **R.M.K** (the minor) temporarily from England and Wales for the purposes of a holiday in Kenya between **18<sup>th</sup> December 2015 and December 27<sup>th</sup> 2015** both dates inclusive, after which the minor shall return and live in England and Wales on or before the 27<sup>th</sup> of December 2015.
  - iii. There be no order as to costs.
2. The application is supported by the affidavit of **L.W. K** dated the 21<sup>st</sup> of October 2015. She deposes that she is the biological mother of R.M.K. (a minor) and that the Respondent is the biological father and all of them are residents of England and Wales. That there are proceedings filed in the Family Court at Oxford in England and Wales being Case Number OX14P00245 involving the Respondent and herself. That one of the issues for determination in the said case is which parent will retain custody of R.M.K (a minor). That in the course of the proceedings she made an application to remove the minor from England and Wales for two weeks holiday in Kenya. That by Child Arrangement Orders issued on the 8th January 2015 the Court directed the temporary removal of the minor from England and Wales to Kenya for holiday. The terms of the orders issued by the court are as follows:
    - a. The Respondent herein was permitted to remove the minor temporarily from England and Wales for purposes of holiday in **Egypt between 3<sup>rd</sup> April, 2015 and 11<sup>th</sup> April 2015** both dates inclusive.
    - b. The Respondent herein was permitted to remove the minor temporarily from England and Wales for purposes of a holiday in **Spain between 13<sup>th</sup> August 2015 and 28<sup>th</sup> August 2015** both dates inclusive.
    - c. The Respondent to remove the minor temporarily from England and Wales for purposes of holiday in **Kenya between 18<sup>th</sup> December 2015 to 27<sup>th</sup> December 2015** both dates inclusive.
  3. That the removal of the minor from England and Wales was subject to the condition that she obtains an order from the Kenyan Family Court reflecting the terms of the said order. She avers that it was not possible to obtain the order by the 18<sup>th</sup> September 2015 as the preparation of the paper work took a lengthy time, thus she seeks the orders as prayed.
  4. I have seen the order the applicant refers to made in the Family Court at Oxford on the 8<sup>th</sup> of January 2015 in relation to R.M.K. The Family Court at Oxford has specifically permitted the mother to remove R.M.K temporarily from England and Wales for purposes of a holiday in Kenya between **18.12.2015 and 27.12.2015** inclusive provided that on or before the 18.09.2015 she obtained at her own expense an order from the Kenyan Family Court reflecting the terms of the said order and the child arrangements for Rosh, in particular that he shall live in England and Wales and be returned to England and Wales from Kenya at the conclusion of the holiday on or before the 27<sup>th</sup> of December 2015.
  5. The applicant has cited a matter Misc. Application No. 109 of 2013 that was dealt with by Justice Musyoka where a similar application was made. I note that the applicant has approached this Court under the Foreign Judgment (Reciprocal Enforcement) Act Cap. 43 of the Laws of Kenya, which makes provision for enforcement of judgments given by courts in countries outside Kenya which accord reciprocal treatment to judgments given in Kenya. I note that the orders that are the subject of this application were made by the Family Court at Oxford in England. The United Kingdom is a reciprocal country under the Schedule to the Foreign Judgment (Reciprocal Enforcement) Act.
  6. The applicant is the mother of the minor and she has attached the relevant order from the Family Court at Oxford authorizing her to remove the minor from England and Wales for the period indicated. She has explained why she could not make this application earlier and why she could not obtain the order by the 18<sup>th</sup> of September 2015. She has indicated that she intends to make an application to the Family Court at Oxford with a view of extending the time within which an order

of this court should be presented. I have seen the annexed certificate dated the 12<sup>th</sup> of August 2015 as required by section 5 (4) of the Kenyan Foreign (Reciprocal Enforcement) Act. I also note that the Respondent did participate in the proceedings in the Family Court at Oxford through his counsel Damian Garrido.

7. This court is satisfied that the applicant is entitled to the orders sought the application is merited and is allowed as prayed. The order given in **Case Number OX14P00245** by the Family Court at Oxford on the 8<sup>th</sup> of January 2015 shall be registered pursuant to the Foreign Judgment (Reciprocal Enforcement) Act. The applicant is permitted to remove **R.M.K (the minor)** temporarily from England and Wales for the purposes of a holiday in Kenya between the **18<sup>th</sup> December 2015 and 27<sup>th</sup> December 2015 both dates inclusive**, after which the minor shall return and live in England and Wales on or before **27<sup>th</sup> December 2015**. No order as to costs. It is so ordered.

**Dated signed and delivered this 11<sup>th</sup> day of December 2015.**

**R.E.OUGO**

**JUDGE**

**In the presence of:**

.....**For the Applicant**

.....**Court Clerk**