

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL SUIT NO. 1088 OF 1998 (O.S.)

NORTHERN EXECUTIVE AVIATION

LIMITED PLAINTIFF

VERSUS

IBIS AVIATION LIMITED DEFENDANT

R U L I N G

The Originating summons dated 8th May 1998 and filed into the court on 11th May 1998, is brought into the court under Rule 2(1) of the Foreign Judgments (Reciprocal Enforcement) Rules. It is seeking to have Default judgment of the High Court of Justice Queens Bench Division Commercial Court (1997 Folio 1542) registered in Kenya. The Court had earlier ordered this matter to be heard by way of viva voce evidence. However, when the matter came up for hearing, the Respondent or its Advocate did not turn up in court. Mr. Majanja for the Applicant felt no need for calling a witness and so proceeded to address me on the application.

I have perused the application. I have perused the Affidavit sworn by Peter Obonyo Mboya dated 8th May 1998, I have also perused the Default Judgment in the High Court of Justice, Queens Bench Division Commercial Court 1997 Folio 1542, I have perused the Certificate of judgment and all the other annextures to the Affidavit of the same Peter Obonyo Mboya. I have also perused the affidavit of Ian Fredrick Clark and the annextures to the same Affidavit. Finally, I have seen the Ruling delivered by Hon.

Justice P. Hewett on a relevant issue. I am satisfied first that the judgment sought to be enforced i.e. Judgement of the High Court of Justice Queens Bench Division Commercial Court in London England (i.e. the original court) (1997 Folio 1542) was dated 20th August 1997 in favour of the Applicant as against the Respondents as Defendants and this application was brought into this court on 11th May 1998. That is clearly within six years of the date of Judgment and the relevant required documents are annexed. A copy of the same Judgment has been annexed. Hon. Justice Hewett has ruled on the admissibility of the same and the status of the original court in England. I am also satisfied from the evidence and documents before me that the same Judgment has not been satisfied in England. I will take judicial notice that England is a Commonwealth country. In any case paragraph 6 of Obonyo Mboya's affidavit has not been challenged. I am also satisfied that the liquidated award is final and conclusive between the parties. This has been alleged by Obonyo Mboya and has not been challenged in any way by the Respondent and I am also satisfied that the award may be enforced by execution in England. I do therefore determine the questions raised in the originating summons as follows:

First that the Applicant is in my mind entitled to apply to have registered the liquidated award of United States dollars Two hundred and ten thousand (US Dollars 210,000) as appears in the Default judgment of the High Court of Justice Queen's Bench Division Commercial Court in London England as appears in the copy of the same Judgment annexed to the Affidavit of Peter Obonyo Mboya. Secondly, I am satisfied that the same judgment may be registered as I do feel that there are no grounds upon which the same registration might be set aside by this court.

I order that the same Judgment be registered. Costs to the Applicant.

Orders accordingly.

Dated at Nairobi this 8th day of May 2001.

ONYANGO OTIENO

JUDGE