



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kimanzi v Tandstand (Civil Suit E019 of 2021)  
[2025] KEHC 6644 (KLR) (Family) (23 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6644 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**FAMILY**

**CIVIL SUIT E019 OF 2021**

**H NAMISI, J**

**MAY 23, 2025**

**BETWEEN**

**FLORENCE KIMANZI ..... PLAINTIFF**

**AND**

**KJELL PER TANDSTAND ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff is a citizen of Kenya and resident in Norway. The Defendant is a Norwegian national, living and working in Norway. The parties got married in Nairobi on 26 July 2003, but separated in 2014. Whereas the Plaintiff moved to Norway in 2005, the Defendant did not reside in Kenya permanently. The couple enjoyed a permanent residence in Norway.
2. During their marriage, the couple acquired property in Kenya. Some of the properties were registered in the name of Tandstand Limited and others registered in their names.
3. Following their divorce, the Sunnmore District Court of the Kingdom of Norway granted a division of community property judgement on 12 December 2019. In the said judgement, the Plaintiff was ordered to pay Norwegian Kroner One Million and Thirty-Four Thousand, Seven Hundred and Ninety-Eight (NOK 1,034,798/-) to the Defendant within 14 days.
4. On the other hand, the Defendant was ordered to sign and contribute to the issuance of an encumbrance-free title deed for the transfer of parcel of land LR NGONG/NGONG/25217 to the Plaintiff within 14 days. The said property is registered in the name of Tandstand Limited. At some point, it seemed as though the Defendant would comply with the judgement. He signed the Director's resolution to transfer the assets from Tandstand Limited to the Plaintiff, including two motor vehicles. He also sent copies of his passport and passport size photos to the Advocate handling the transaction. However, he did not submit a copy of his KRA PIN certificate as requested.



5. This compelled the Plaintiff to institute proceedings in a court in Norway to force the Defendant to comply with the judgement. Upon hearing the matter, the Norwegian Court directed that it could not issue orders to execute the judgement since the property was situated in Kenya. Such an order could only emanate from the Kenyan Courts.
6. It is against this background that the Plaintiff instituted these proceedings seeking the following orders:
  - i. That the Judgement of Sunnmore District Court of the Kingdom of Norway dated 12 December 2019 is adopted as a judgement of this Honourable Court and Decree issued in terms of that judgement;
  - ii. That an order issues from this Honourable Court directing the Ministry of Lands of the Republic of Kenya to transfer Ngong/Ngong/25217 to Florence Kimanzi and the Deputy Registrar to sign the requisite forms in satisfaction of that judgement as adopted by the Court;
  - iii. That the Defendant pays 50% of the costs of transferring the land to the Plaintiff;
    - a. That the Defendant reimburses the Plaintiff the expenses she incurred in enforcement of the Norwegian judgement as set out in the Plaint as follows:
      - (b) NOK 23,077/50 in obtaining a certified translation of the Norwegian judgement, for court filing fees to enforce the judgement in Norway, for service of the Demand Letter on the Defendant in Norway and for Notary Public fees to certify the documents;
      - (b) NOK 49,125/0 on Advocate fees for her Norwegian Advocates from the date of the judgement until 25 March 2021 in trying to enforce the judgement;
      - (c) Kshs 986,000/- on Advocate fees for her Kenyan Advocates to enforce the Norwegian judgement in Kenya
  - (v) That the Defendant pays interest on the above at court rates from the date of the judgement by the Sunnmore District Court of the Kingdom of Norway on 12 December 2019 until the Defendant's full compliance with this Honourable Court's judgement;
  - (vi) costs of these proceedings
  - (vii) Any other order this Court deems fit and just to grant the Plaintiff considering the case as a whole.
7. The matter proceeded by way of documents.

### **Plaintiff's Case**

8. The Plaintiff filed her witness statement as well as bundle of documents.
9. In her Witness Statement, the Plaintiff pleaded that on 12 December 2019, the parties were granted a divorce/division of community property judgement by the Sunnmore District Court of the Kingdom of Norway. She attached both the original and translated copies of the judgement. Whereas the Plaintiff fully complied with the orders, the Defendant did not. Both parties engaged the service of Patrick Rono, Advocate to carry out the transfer of the properties in question. It is at this point that the Defendant refused, neglected and/or failed to submit a copy of his KRA Pin Certificate, thus hindering the transfer of the property known as Ngong/Ngong/25217.
10. In her Reply to the Defence, the Plaintiff pleaded that the judgement of 12 December 2019 was passed in full compliance with all municipal and international laws and the same was never appealed. It is her



contention that the Defendant's allegation of breach of Kenyan law is at best an afterthought and a wild attempt to justify non-compliance with a valid judgement of a Court of competent jurisdiction. She averred that a suit to enforce a valid judgment of a foreign country is consistent with the Laws of Kenya and that the said judgement does not offend any particular law in Kenya. Efforts to frustrate the enforcement thereof constitute breach of the very law the Defendant alleges as having been breached.

11. Additionally, the Plaintiff filed a legal opinion dated 25 March 2021 by Mr. Richard Lippens, an Advocate licenced to practice in Norway and a member of the Norwegian Bar Association. It is his undoubted opinion that a petition for enforcement of the Norwegian Ruling must be submitted in the country where the property in question is located, in this case, Kenya, in accordance with the recognised international law.

### **The Defendant's Case**

12. In his Defence, the Defendant pleaded that the judgement of 12 December 2019 is but one of two judgements given by the Norwegian Courts. The first judgement was rendered on 27 March 2017, but the same did not conclusively determine the division of community property. Further, between 27 March 2017 and 12 December 2019, parties entered into an out-of-court agreement dated 2 April 2018, which further determined the division of property.
13. The Defendant averred that the judgement of 12 December 2019 was only to finally settle the division of the remaining part of the community property. He pleaded that the said judgement, however, was issued in breach of Kenyan law regarding the distinct personality between a company and its shareholders and directors. The Plaintiff and Defendant are shareholders of Tandstand Limited, which is the registered proprietor of the property Ngong/Ngong/25217.
14. The Defendant denied the averment that he neglected, refused an/or disobeyed the judgement of 12 December 2019.
15. The Defendant filed a witness statement as well as a bundle of documents containing the judgements of 27 March 2017, the out-of-court agreement dated 2 April 2018 and outstanding payments owed by the Plaintiff to the Defendant.
16. The parties filed their respective submissions.

### **Analysis and Determination**

17. I have keenly read the pleadings, witness statements, documents presented and the submissions by the parties. The sole issue for determination herein is whether the judgement of the Sunnmore District Court dated 12 December 2019 should be adopted as a judgement of this Court.
18. Before delving into the issue of enforcement, I would like to point out some undisputed facts, which will come into perspective later in this judgement, namely:
  - a. The parties herein were married in Nairobi and acquired several properties in Kenya during the subsistence of their marriage. Some of the properties were registered in the name of Tandstand Limited.
  - b. Both parties are shareholders in Tandstand Limited. There are no other shareholders.
  - c. The parties submitted themselves to the Norwegian Courts, which are courts of competent jurisdiction and were represented by counsel. There are 2 judgements by the Norwegian Court dividing the community property between the parties, dated 27 March 2017 and 12 December 2019.



- d. No appeal has been preferred against either judgement.
  - e. The validity of the judgments of the Norwegian Courts presented herein has not been challenged.
  - f. Both parties engaged the services of Patrick Rono, Advocate, to carry out the transfer of the property in question in compliance with the Norwegian judgement.
19. Back to the issues at hand. Generally speaking, a foreign judgment will have no direct operation and cannot be enforced until it has been recognized. Recognition occurs when the court of one country accepts a judicial decision made by the courts of another foreign country, and issues a judgment in substantially identical terms without rehearing the substance of the original lawsuit. The party seeking to enforce a foreign judgment must, therefore, first apply to the court to have it recognized. Once the necessary procedural steps have been completed, the foreign judgment will be enforced as if it was a Kenyan judgment.
  20. In Kenya, the primary statute governing enforcement of foreign judgements is the Foreign Judgement (Reciprocal Enforcement) Act which only applies to enforcement of judgements originating from countries outside Kenya which accord reciprocal treatment to judgements given in Kenya. These countries as listed under the Act include Australia, Malawi, Seychelles, Tanzania, Uganda, Zambia, the United Kingdom and the Republic of Rwanda.
  21. The High Court of Kenya pursuant to the provisions of section 3 of the *Judicature Act* and its original and unlimited civil jurisdiction provided in Article 165 (3) of *The Constitution* has jurisdiction to hear and determine any issue relating to enforceability of foreign judgments from non-designated countries, as is the case herein.
  22. In his submissions, the Defendant raised one preliminary issue that I wish to address first. The Defendant submitted that the judgement produced by the Plaintiff is not authenticated by a competent authority in Norway, therefore, the same cannot be enforced by this Court. To support his position, the Defendant relied on the case of *ABSA Bank Uganda Limited (formerly known as Barclays Bank of Uganda Limited) v Uchumi Supermarkets PLC (Civil case E316 of 2020) [2021] KEHC 14 (KLR)*, where the Court held:

“For enforcement of foreign judgment from a non designated country, a party must file a plaint at the High Court of Kenya providing a concise statement of the nature of the claim, claiming the amount of the judgment debt, supported by a verifying affidavit, list of witnesses and bundle of documents intended to be relied upon. A certified copy of the foreign judgment should be exhibited to the plaint.

A foreign judgment must be authenticated by a competent authority in its country of origin...
  23. The Plaintiff filed Supplementary Submissions, responding to the issue raised.
  24. What is clear from the argument and counter-argument is that the Defendant does not dispute the existence of the judgement, neither does he dispute the contents thereof or its translation. In fact, he admitted that the said judgement was issued after the earlier one of 27 March 2017 and the out-of-court agreement of 2 April 2018. His only issue is that the copy of the judgement presented before this Court by the Plaintiff has not been authenticated by a competent authority in its country of origin. The Defendant relied on the ABSA case (*supra*) where the court clearly indicated that “A certified copy of the foreign judgment should be exhibited to the plaint.”



25. A certified copy of the judgement has been presented with the Plaintiff. I, therefore, find that this argument by the Defendant is moot.
26. I now turn to the issue of recognition and enforcement of a foreign judgement.
27. It is important to note that in the absence of a reciprocal enforcement arrangement, and such is the case herein, a foreign judgment is enforceable in Kenya as a claim in common law. The milestone case of *Adams v Cape Industries PLC* laid down the common law principles governing the enforcement of foreign judgments. In *ABSA Bank Uganda Limited (Formerly Known as Barclays Bank of Uganda Limited) v Uchumi Supermarkets PLC (supra)*, the Court observed as follows:

“Under common law, the onus will be on the plaintiff seeking to enforce the foreign judgment to prove the competence of such court to assume jurisdiction although that evidentiary burden may shift during the trial. The general requirements for enforcement of foreign judgments can be summarized as follows:

- a. The foreign judgment must be final and have no conflict with prior judgments.
  - b. A foreign judgment is final for enforcement purposes even if an appeal is pending against it in the foreign jurisdiction.
  - c. The judgment of a foreign court that cannot be enforced by execution in that state’s court cannot be enforced by a Kenyan court.
  - d. The foreign court must have had jurisdiction over the defendant. Jurisdiction is confirmed if the cause of action arose within the jurisdiction of the foreign court, if the defendant voluntarily submitted to the court’s jurisdiction or if he resided there or had a place of business there, or where the matter is contractual the contract was substantially performed in the country of that court.
  - e. The defendant must have been given notice of the court proceedings against him in conformity with the rules of natural justice and due process of law. Notice should be given in conformity with the laws of that foreign court.
  - f. The foreign judgment must not be contrary to Kenyan public policy. Anything inconsistent with the Kenyan domestic laws, morality and sense of justice or national interests will be deemed contrary to Kenyan public policy.
  - g. The foreign judgment is only enforceable within six years of the date of judgment or six years after the last judgment where there may have been appeals from the original judgment.
28. On the issue of adoption of a foreign judgement, the Plaintiff submitted that once a foreign judgement has been demonstrated to have been lawfully delivered and by a Court of competent jurisdiction, a mere assertion that the judgement was erroneous in law or in fact will not suffice. The Plaintiff relied on the case of *Jayesh Hasmukh -vs- Navia Haria & Manu Shah [2016]* where the Court of Appeal cited with approval the Ugandan High Court case of *Christopher Sales & Another vs Attorney General, Uganda HCCC No. 91 of 2011*. The Court of Appeal stated:

“We are satisfied that where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting a trial upon regular proceedings, after due citation or voluntary appearance by the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between citizens of its own country



and those of other countries, and there is nothing to show either prejudice in the court or in the system of law under which it is sitting, or fraud in procuring the judgement, or any other special reason why the country of this nation should not allow its full effect, the merits of the case should not, in an action brought in this country upon the judgement be tried afresh, as on a new trial or appeal, upon the mere assertion of the party that the judgement was erroneous in law or in fact.”

29. The Plaintiff submitted that the Defendant, a beneficiary of the judgement, has not denied the said judgment. He only asserts that the same is in conflict with the *Companies Act* of Kenya because the property in question belongs to a company. The Plaintiff submitted that by virtue of the position that the Defendant took in the Norwegian court regarding the corporate veil of Tandstand Limited, the Defendant is estopped from this argument. Reliance was placed on the case of John Mburu -vs- Consolidated Bank of Kenya Ltd [2018] eKLR which underscored the importance of the principle of estoppel.
30. It is the Plaintiff’s submission that in any event, other than asserting that the Norwegian judgment is in conflict with the *Companies Act*, the Defendant has not demonstrated how signing off and transferring the Ngong property is in violation of the Act, since Tandstand Ltd can, with the sanction of its shareholders, dispose of its properties. As indicated in the undisputed facts laid out hereinabove, the Plaintiff and Defendant are the only shareholders of the company.
31. On his part, the Defendant submitted extensively on the separate juridical entity of the company, which is distinct from its shareholders. Reliance was placed on several authorities including NN v SNM (2017) eKLR, where the Court held:
- “It is trite law that a company is a separate legal persona/entity from its shareholders and directors as was espoused in the English case of Salomon v Salomon (1887) AC 22. From the foregoing I find the said property in the LR. No. [particulars withheld] managed by particulars (withheld) limited belongs to the company and therefore the applicant can only make a claim to the company shares under the provisions of the Company Act.”
32. The Defendant made reference to the provisions of section 486 and 492 of the *Companies Act* with regard to distribution of company assets. It was the Defendant’s submission that parties cannot conspire to defeat the law or to breach the law, and when questioned, waive the consensus card. In the case of Kolaba Enterprises Limited v Shamsudin Hussein Varvani & Another (2014) eKLR in relation to lifting the corporate veil the court held:
- “... Although it is a fiction of the law, it still is as important for all purposes and intents in any proceedings where a company is involved. Needless to say, that separate legal personality of a company can never be departed from except in circumstances where the statute or the law provides for lifting or piercing of the corporate veil, say when the directors or members of the company are using the company as a vehicle to commit fraud or other criminal activities.”
33. In considering the arguments and counter-argument, I have carefully read through the various documents presented by the parties. In its judgement of 27 March 2017, which copy was produced by the Defendant, I note that during the proceedings before the Norwegian Court, the parties agreed on a number of issues. The consent/Agreement was duly recorded by the Norwegian Court. One of the issues agreed upon was:
- ”The parties agreed that in the further division of marital assets they will disregard the company constellations that have been created so that the distribution of assets will take



place as if they personally belonged to the parties. It was further agreed that the disputes about the division of marital assets must be filed no later than 15 June 2017 if unequal division will be claimed, otherwise all funds shall be divided equally.”

34. The proceedings appear to be have been signed by both the Plaintiff and Defendant.
35. The Defendant also produced a copy of the out-of-court agreement dated 2 April 2018 which captures their mutual consent on the division of various assets. In particular, the agreement which is executed by both parties states, inter alia:
  - (6) Florence Kimanzi takes over household contents/moveable property free of charge in Ngong.
36. It is the Defendant’s own admission that the judgment of 12 December 2019, the subject herein, encompasses the previous judgement of 27 March 2017 as well as the out-of-court Agreement of 2 April 2018. The Defendant did not dispute their contents, neither did he dispute that he fully participated in the proceedings and signed the respective documents.
37. From the case presented by the Plaintiff, the Defendant had all along complied with the orders of 12 December 2019. He furnished the Advocate with all the relevant documentation, except for the KRA Pin Certificate. It is at this juncture that he stopped communicating and co-operating. The only reason advanced by the Defendant is that the judgement of 12 December 2019 offends the provisions of the *Companies Act*.
38. In essence, the Defendant’s argument is a veiled attempt at seeking to review or appeal the decision of the Norwegian Court as well as the consent entered into by parties. The Defendant enjoyed legal representation in the court proceedings in Norway. He voluntarily submitted himself to the jurisdiction of the Norwegian court. He voluntarily consented to the issues adopted in the judgement of 27 March 2017 as well as the Agreement of 2 April 2018. He even went as far as furnishing the requisite documents for the transfer of the Ngong property, only to have a change of heart at the last minute. He now challenges this suit on the basis that the same contravenes the provisions of the *Companies Act*, contending that Tandstand Limited is a separate legal entity from its shareholders. Yet it is a well-established position that a company acts through its directors and/or shareholders, who in this instance happen to the parties herein.
39. Ideally, these are arguments that the Defendant ought to have raised in the Norwegian Court where the judgement emanates. Accordingly, I will not waste judicial ink in any or further evaluation of this issue, which, in my view, is a hidden attempt at circumventing a consent.
40. It is also noteworthy that while the Defendant has presented a list of expenses or amounts owing to him, he did not file a counterclaim herein. The Plaintiff, on the other hand, has produced documentation to prove the various expenses incurred in trying to enforce the judgement of 12 December 2019 against an unco-operative Defendant.
41. In view of the foregoing, I find that the Plaintiff succeeds. Judgement is hereby entered in favor of the Plaintiff against the Defendant as follows:
  - i. The Judgement of Sunnmore District Court of the Kingdom of Norway dated 12 December 2019 is adopted as a judgement of this Court;
  - ii. The Deputy Registrar is hereby directed to sign the requisite forms to effect transfer of Ngong/ Ngong/25217 to the Plaintiff in satisfaction of the judgement adopted in (i) hereinabove;



iii. The Plaintiff is awarded costs of this suit plus interest at court rates until payment in full.

**DATED AND DELIVERED AT NAIROBI THIS 23 DAY OF MAY 2025**

**HELENE R. NAMISI**

**JUDGE OF THE HIGH COURT**

Delivered on virtual platform in the presence of:

Mr. Munywoki h/b Mr. Maruti....for the Plaintiff

Mungai.....for the Defendant

Libertine Achieng.....Court Assistant

