Grace v Green World International Limited (Miscellaneous Application E792 of 2023) [2025] KEHC 10718 (KLR) (Commercial & Admiralty) (3 July 2025) (Judgment)

Neutral citation: [2025] KEHC 10718 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND ADMIRALTY

MISCELLANEOUS APPLICATION E792 OF 2023

F GIKONYO, J

JULY 3, 2025

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 INTERMEDIATE COURT OF NYARUGENGE, RWANDA IN RSOC 0155/12/TGI/NYGE

BETWEEN

KIIZA BATAMURIZA GRACE ..... PLAINTIFF

AND

GREEN WORLD INTERNATIONAL LIMITED ..... DEFENDANT

JUDGMENT

Recognition and enforcement of foreign judgment

1. Before me is the Originating Summons (OS) dated 13th September 2023, expressed to be brought under Section 5 of the *Foreign Judgments (Reciprocal Enforcements) Act* and Rule 2 of the *Foreign Judgments (Reciprocal Enforcement) Rules, 1984*.

2. The applicant seeks the following orders:-

    1. That leave is granted to the Plaintiff for registration of the judgment/order of the Intermediate Court of Nyarugenge, Rwanda in RSOC 0155/12/TGI/Nyge issued on 1st March 2013 out of time;

    2. That leave be granted to the Applicant to register in the High Court of Kenya the Judgment/ Order of The Intermediate Court of Nyarugenge, Rwanda in RSOC 0155/12/TGI/Nyge issued on 1st day of March 2013;

3. That execution of the said Judgment of the Intermediate Court of Nyarugenge, Rwanda, dated 1st March 2013, do issue after 14 days of service of the Notice of Registration of Judgment.

4. That the applicants be granted leave to apply for further orders after the registration herein above referred to as the Court may deem fit and just.

3. The summons is supported by the annexed affidavit sworn by the applicant on 13th September 2023 and written submissions dated 5th February 2025.

4. The primary grounds are that the applicant obtained the subject judgment, but the respondent has not satisfied the decree and that the applicant contends that the respondent has no attachable assets in Rwanda, hampering efforts to execute there.

5. The backdrop is that the applicant instituted the claim for compensation against the respondent in the Intermediate Court of Nyarugenge, Rwanda in RSOC 0155/12/TGI/Nyge. The applicant and the respondent signed a contract dated 6th July 2009, for the applicant to act as its representative and register a company in Rwanda. The company was successfully incorporated in Rwanda. The dispute ensued after she was dismissed in August 2011 from employment by the respondent after working for two years. The respondent refused to give her the pending salaries.

6. Through the subject judgment, the applicant was awarded:-

    1. All salaries amounting to US$20,000 for her services as the respondent's representative in Rwanda.

    2. Damages amounting to US$ 5,010 for the work certificate not issued on time.

    3. Costs of proceedings (all costs in the course of trial) amounting to Rwf 200,000.

    4. Retainer for attorney amounting to Rwf 500,000.

    5. Social service contributions for the period of work as its representative in Rwanda, that is to say 21/10/2009 until 03/08/2011.

7. The respondent's appeal against the judgment was dismissed on 7th January 2014.

8. The applicant relied on:-

    1. *Jayesh Hasmukh Shah vs. Navin Haria & another* [2016] eKLR

    2. *Dari Ltd & 5 Others vs. East African Development Bank* [2023] KECA 454 (KLR)

    3. *Intalframe Ltd v Mediterranean Shipping Company*, (1986) KLR

9. The OS elicited no response from the respondent despite service.

Analysis and Determination

Enlargement of Time

10. The applicant seeks leave to register the judgment issued on 1st March 2013 out of time. Section 5 of the *Foreign Judgments (Reciprocal Enforcement) Act* requires that an application for registration of a foreign judgment under the Act is made within 6 years from the date of the judgment or the judgment on appeal.

11. In *Lamshore Limited & 2 others v Bizanje K. U.D.K & 2 others* [2014] KEHC 1294 (KLR), the court set aside an order for registration of a foreign judgment on an application made past the 6-year statutory window.

12. Despite seeking leave, in her submissions, the applicant took a different stance. She argued that the application was made in time. She asserted that under Section 4 (4) of the *Limitation of Actions Act* action for enforcement of a foreign judgment has to be brought in Kenya within 12 years of the date of that judgment. She highlighted that the foreign judgment herein was issued on 1st March 2013, and the application was filed in 2023, well within the statutory timelines.

13. The court has the equitable discretion to enlarge the time prescribed for applying for registration of a foreign judgment. The principles for consideration in determining whether to extend time were set out in:-

> " Extension of time is not a right of a party. It is an equitable remedy that is only available to a deserving party at the discretion of the Court; A party who seeks for extension of time has the burden of laying a basis to the satisfaction of the court Whether the court should exercise the discretion to extend time, is a consideration to be made on a case to case basis; Whether there is a reasonable reason for the delay. The delay should be explained to the satisfaction of the Court; Whether there will be any prejudice suffered by the respondents if the extension is granted; Whether the application has been brought without undue delay; and Whether in certain cases, like election petitions, public interest should be a consideration for extending time."

14. The application ought to have been filed on 7th January 2020, six years from the date of the judgment on appeal, being 7th January 2014. It was filed on 13th September 2023 approximately three years after the deadline. There is delay.

15. But, of critical significance is whether the delay has been explained to the satisfaction of the court. *Andrew Kiplagat Chemaringo v Paul Kipkorir Kibet* [2018] eKLR

16. The applicant indicated that she had been attempting to execute the judgment in Rwanda during the period, which efforts have been futile since the respondent has no assets there. This is explanation is satisfactory for it demonstrates that the applicant did not lie idle only to wake up one morning to seek enforcement of her judgment in a foreign land. Those demonstrable efforts to execute the judgment at home but in vain because the respondent does not have assets in Rwanda, unlock court's discretion in her favour.

17. Time is accordingly enlarged and the application deemed to be properly made.

Requirements for recognition of foreign judgment

18. The next hurdle. Does the application satisfy the requirements for the registration of the foreign judgment?

19. Rwanda is one of the reciprocating countries under the *Act*. The judgment is therefore, from a reciprocating country.

20. Section 5(4) of the *Act* lists the documents that should accompany the application. These are a certified or duly authenticated copy of the judgment and certificate of enforcement under seal and an affidavit stating that at the date of the application, the judgment has not been satisfied and can be enforced by execution in the country of origin.

21. The applicant stated in her affidavit that the judgment remains unsatisfied. The applicant attached a certified copies of the judgment dated 1st March 2013.

22. However, she did not attach a certificate of enforcement in the prescribed form. Nevertheless, this omission may be cured through an order requiring filing of the certificate before execution of the decree.

Disposal

23. The application dated 13th September 2023 is allowed, in terms of prayers (1).

24. The applicant is directed to file a certificate of enforcement in the prescribed form within 30 days from the date of this ruling. The certificate shall be provided to the Deputy Registrar of the Court before any warrants in execution of the judgment are issued.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 3RD DAY OF JULY, 2025

F. GIKONYO M.

JUDGE

In the presence of: -

Waweru for Rabala for Plaintiff

Kinyua C/A