



Tapestry Audio Visual Ltd v Centre for International Forestry Research (Commercial Suit E591 of 2023) [2024] KEHC 13816 (KLR) (Civ) (7 November 2024) (Judgment)

Neutral citation: [2024] KEHC 13816 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL
COMMERCIAL SUIT E591 OF 2023
H NAMISI, J
NOVEMBER 7, 2024

BETWEEN

TAPESTRY AUDIO VISUAL LTD APPLICANT

AND

THE CENTRE FOR INTERNATIONAL FORESTRY RESEARCH RESPONDENT

JUDGMENT

1. Before the Court is an Originating Summons dated 28 October 2023 filed under Articles 2 and 159 of the *Constitution*, sections 3(1) (a), 3 (2), 5 (1), 5 (2) (a) (ii) , 5(2) (b), 5(4), 6(1) and 8 of the *Foreign Judgments (Reciprocal Enforcement) Act*, Order 37 Rule 14 of the *Civil Procedure Rules* and Rules 2(1) and 3 of the *Foreign Judgement (Reciprocal Enforcement) Rules*. The same seeks the following orders:
 - i. That this Honorable Court be pleased to issue orders that the Decree of the Sheriff Court in Perth Court Ref No PER-CA16-23 delivered on 2nd June, 2023 by the Sheriff Clerk Depute, John Bicket, be recognized and registered as a Judgment of this Honorable Court, the Judgment and Order aforesaid be enforced within the jurisdiction of this Honorable Court;
 - ii. That this Honorable Court be pleased to issued orders that the Applicant herein be at liberty to enforce the Decree of the Sheriff Court in Perth Court Ref No PER-CA16-23 delivered on 2nd June, 2023 by the Sheriff Clerk Depute, John Bicket, within the jurisdiction of this Court;
 - iii. That this Honorable Court grants leave to the Applicant to execute the Decree of the Sheriff Court in Perth Court Ref No PER-CA16-23 delivered on 2nd June, 2023 by the Sheriff Clerk Depute, John Bicket, and the orders issued pursuant thereto both recognized and registered by this Honorable Court;



- iv. This Honorable Court be pleased to issue such other orders to the ends of justice;
 - v. The costs of this Originating Summons be provided for
2. The Application is supported by the Affidavit of Eunice Lumallas, Advocate and premised on the grounds on the face of the Application. The Applicant filed submissions dated 19 June 2024. I note that right from the onset, the Respondent has not participated in these proceedings despite being served.

Brief Background

3. The parties herein entered into an Agreement for the hire of equipment by the Applicant. Thereafter, the Respondent failed and ignored to uphold their obligation to pay the consideration in the sum of £119,567.04. Consequently, the Applicant filed a cause against the Respondent before the Sheriffdom of Glasgow and Strathkelvin at Glasgow for the entire sum of £119,567.04 together with interests and costs of the cause. The said court, in its findings, determined that the Respondent was indebted to the Applicant in the sums sought together with interest at 8% per annum from 5 November 2021 as well as expenses of £3,374.
4. The Applicant proceeded to effect service of this Decree upon the Respondent's office in Kenya through Ministry of Foreign & Diaspora Affairs on 11th October, 2023 by way of demand for fulfillment of the Decretal sum in full. The Respondent did not heed the demand and the amount remains outstanding.
5. The Applicant is now desirous of registering, in Kenya, the Decree delivered by John Bicket, Sheriff Clerk Depute on 2nd June, 2023 at the Sheriff Court in Perth Court Ref No PER-CA16-23 pursuant to the *Foreign Judgment (Reciprocal, Enforcement) Act* Chapter 43 of the Laws of Kenya.

Analysis and Determination

6. The law relating to enforcement of judgments made in foreign countries is set out in the *Foreign Judgment (Reciprocal Enforcement) Act*, Chapter 43 of the Laws of Kenya. The objective of the Act is to make provision for the enforcement in Kenya, of judgments given in other countries which accord reciprocal treatment to judgments given in Kenya and for other purposes in connection therewith. The orders that the Applicant seeks to have registered by this Court were issued by the Sheriff Court in Perth. In order for the said order to be enforceable, it must meet two criteria. First, the order must be made by a designated court and second, it must be an order or judgment to which the Act applies.
7. Section 2(1) of the Act defines a designated court as follows:

“designated court” means—

 - a. a superior court of a reciprocating country which is a Commonwealth country;
 - b. a superior court of any other reciprocating country which is specified in an order made under section 13;
 - c. a subordinate court of a reciprocating country which is specified in an order made under section 13;



8. The *Foreign Judgments (Reciprocal Enforcement) (Extension of Act) Order, 1984* lists in a schedule the reciprocating countries. Paragraph 2 of the Order provides:

The countries specified in the Schedule are declared to be reciprocating countries for the purposes of the Act and the Act shall apply with respect to judgments given by superior courts of those countries.

Schedule

1. Australia,
 2. Malawi,
 3. Seychelles,
 4. Tanzania,
 5. Uganda,
 6. Zambia,
 7. The United Kingdom,
 8. Republic of Rwanda.
9. Sherrif Court is a Court in the United Kingdom which is recognised as a reciprocating Country as provided for in schedule of the Foreign Judgements Reciprocal Enforcement Extension of Order. The Court is located as Glasgow, in Scotland which is within the United Kingdom
10. In the premise, I grant the orders sought in the Originating Summons. The Application is hereby allowed as prayed.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF NOV 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

Mrs. Omondi h/b Eunice Lumallas...for the Applicant/ Judgement Creditor

...N/A.....for the Respondent/Judgement Debtor

