



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Ngigi v Kimaru (Civil Suit E212 of 2024)
[2024] KEHC 15831 (KLR) (Civ) (16 December 2024) (Judgment)**

Neutral citation: [2024] KEHC 15831 (KLR)

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

**CIVIL
CIVIL SUIT E212 OF 2024**

**JM OMIDO, J
DECEMBER 16, 2024**

BETWEEN

FRANCIS NGIGI PLAINTIFF

AND

FRANCIS KIMARU DEFENDANT

JUDGMENT

1. The Plaintiff herein Francis Ngigi brought this suit vide a plaint dated 7th October, 2024 against the Defendant Francis Kimaru seeking judgement for the following reliefs:
 - a. A declaration that the judgement of the Superior Court of Worcester County, Massachusetts, United States of America, in Civil Case No. 1985CV01797, rendered on march 30, 2021, in favour of the Plaintiff for the sum of USD 926,599.20 (inclusive of damages and statutory interest), is recognized and enforceable within the jurisdiction of this Honourable Court.
 - b. An order for the enforcement of the said judgement within the Republic of Kenya, directing the Defendant to pay the Plaintiff the sum of USD 926,599.20 or its equivalent in Kenya Shillings, together with interest.
 - c. An order compelling the Defendant to disclose all assets held within the Republic of Kenya to facilitate the enforcement of the judgement.
 - d. Costs.
 - e. Interest on the judgement sum and any other awarded amounts at commercial rates from the date of judgement until payment in full.
 - f. Any further or other relief that this Honourable Court may deem just and fit to grant.



2. The Plaintiff pleaded that in January/February, 2016, the Defendant approached him and sought to borrow from him USD 800,000 to cover payroll expenses at the Defendant's business, with the agreement that the Defendant would repay the same to the Plaintiff. The Plaintiff agreed to lend the Defendant the said amount and the money was transmitted to the Defendant in two tranches in accordance with the Defendant's request; On 3rd February, 2026, the Plaintiff, through one Catherine Muriithi, the Plaintiff's business partner, wired the sum of USD 500,000 to one of the Defendant's business accounts at Compassionate Home Care, a company operated by the Defendant. On 8th February, 2026, the Plaintiff, through Catherine Muriithi wired the sum of USD 300,000 to the same account at Compassionate Home Care.
3. The Plaintiff further pleaded that the Defendant failed, refused and/or neglected to repay the loaned amount, effectively breaching the contract.
4. The Plaintiff set out the particulars of breach of contract as follows:
 - a. Failing to pay the sum of USD 800,000, or any portion thereof, loaned to him by the Plaintiff despite repeated requests and reminders.
 - b. Failing to honour the agreed-upon terms of the loan, including the timely repayment of the loaned monies once his financial situation stabilized.
 - c. Ignoring and/or refusing to respond to the Plaintiff's multiple attempts to contact him for the purpose of securing payment.
 - d. Providing no valid explanation or justification for the continued non-payment of the loaned funds.
 - e. Willfully neglecting his financial obligations under the loan agreement, thereby causing the Plaintiff financial loss and hardship.
 - f. Failing to act in good faith in his dealings with the Plaintiff, despite their long-standing relationship and the Plaintiff's efforts to resolve the matter amicably.
5. The Plaintiff pleaded further that the breach by the Defendant necessitated the former to institute legal proceedings against the latter in the Superior Court of Worcester County, Massachusetts, a court of competent jurisdiction in the USA, under Civil Case No. 1885CV01797, in which a final, conclusive and enforceable judgement was subsequently entered in favour of the Plaintiff against the Defendant on 30th March, 2021 for a total sum of USD 926,599.20 which included both damages and statutory interest, which judgement remains unsatisfied by the Defendant.
6. The Plaintiff averred that despite concerted demands and efforts to recover the judgement sum from the Defendant, who now resides in Kenya and possesses assets within Kenya, the same have not borne fruit. As such, the Plaintiff filed the instant suit in order to enforce the judgement of the US court within Kenya.
7. The Plaintiff stated that the suit herein has been presented timeously and that this court has jurisdiction to entertain and determine the suit.
8. The Defendant was served with the plaint and summons to enter appearance but did not enter appearance. Upon formal request by the Plaintiff, interlocutory judgement was entered on 13th November, 2024 subsequent to which the matter proceeded to formal proof.



9. The Plaintiff testified and adopted the contents of his witness statement dated 7th October, 2024. In precis, he told the court that the Defendant borrowed USD 800,000 from him which he failed to repay as per the agreement between the parties.
10. That following the failure to repay the said amount, the Plaintiff instituted legal proceedings against the Defendant in the Superior Court of Worcester County, Massachusetts, in the USA, under Civil Case No. 1885CV01797, in which a final, conclusive and enforceable judgement was subsequently entered in favour of the Plaintiff against the Defendant on 30th March, 2021 for a total sum of USD 926,599.20.
11. The Plaintiff produced the following documents in support of his case: Certified copy of the judgement from the Superior Court of Worcester County, Massachusetts, in the USA, in Civil Case No. 1885CV01797. Redacted bank statement from Bank of America maintained by Catherine Muriithi as proof of transfer of payment to Compassionate Home Care. Copies of court records, from the proceedings in Superior Court of Worcester County, Massachusetts, in the USA, in Civil Case No. 1885CV01797. Email and telephone correspondence.
12. The Plaintiff called Catherine Wagithi Muriithi who testified and adopted the contents of her statement dated 7th October, 2024 as her testimony in chief.
13. The witness told the court that she was a business partner of the Plaintiff and knew of the transaction between the Plaintiff and the Defendant whereby the latter borrowed USD 800,000 from her business partner.
14. The witness stated that at the Plaintiff's instructions, she wired to the Defendant's business account USD 500,000 on 3rd February, 2016 and USD 300,000 on 8th February, 2016.
15. The witness further stated that the Defendant failed to repay the said amount following which the Plaintiff successfully sued for the same in the Superior Court of Worcester County, Massachusetts, in the USA in which judgement was entered for the Plaintiff for USD 926,599.20, against the Defendant, which the Defendant has failed to satisfy.
16. As stated above, the Defendant did not enter appearance and the Plaintiff's suit remained unchallenged. It is then my persuasion that the following issues are not controverted: That the Plaintiff advanced to the Defendant USD 800,000/- on an agreement that the Defendant would repay the same to the Plaintiff. The Defendant breached the agreement by failing to repay the USD 800,000. The Plaintiff obtained a final and conclusive judgement that was enforceable in the USA against the Defendant in the Superior Court of Worcester County, Massachusetts, in the USA under Civil Case No. 1885CV01797. The judgement that was obtained in the USA court remains unsatisfied.
17. What then is clear from the above is that the Plaintiff, vide the instant suit, seeks to enforce and execute the USA judgement, for the obvious reason that the USA is not a designated country under the provisions of the Foreign Judgements (Reciprocal Enforcement) Act, Cap 43 Laws of Kenya.
18. The single issue or question for determination then is whether the judgement entered in the USA court can be enforced via the instant suit.
19. The answer to this question is to be found in the decision of Jayesh Hasmukh Shah v Navin Haria & another [2016] eKLR in which the Court of Appeal held that where there are no reciprocal provisions of law, a foreign judgement is enforced as a claim in common law. The claim is filed as a suit in the High Court.



20. In the above case, the court examined the applicable common law principles regarding the enforcement of foreign judgements as enunciated in the case of *Adams & others v Cape Industries PLC* [1990] Ch. 433, where the court stated thus:
- a. Where a foreign court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained. (See *Park B. in Williams v Jones* [1845] 13 M. & W. 628,633 as quoted in *Adams & Others v Cape Industrials PLC*, [1990] Ch. 433 at 513).
 - b. . In deciding whether the foreign court was one of competent jurisdiction, courts will apply not the law of the foreign court itself but English rules of private international law. The competence of the foreign court is competence of the court in an international sense – i.e. its territorial competence over the subject matter and over the defendant. Its competence or jurisdiction in any other sense is not material. (See *Lindley M.R. in Pemberton v Hughes*, [1899] 1 Ch. 781, 791).
 - c. In *Emanuel v Symon*, [1908] 1 KB 302, *Buckley L.J.* said that in actions in personam there are five cases in which the courts of England will enforce a foreign judgment. These are:
 - (i) where the defendant is a subject of the foreign country in which the judgment was obtained;
 - (ii) where he was resident in the foreign country when the action began;
 - (iii) where the defendant in the character of plaintiff has selected the forum in which he is afterwards sued;
 - (iv) where the defendant has voluntarily appeared; and
 - (v) where the defendant has contracted to submit himself to the forum in which the judgment was obtained.
 - d. If a foreign judgment is to be enforced against a corporation, it must be shown that at the relevant time, the corporation was carrying on business and it was doing so at a definite and to some reasonable extent, permanent place in the foreign country. (See *Adams & Others v Cape Industrials PLC*, [1990] Ch. 433 at 512).
 - e. It is only the judgment of a foreign court recognized as competent by English law which will give rise to an obligation on the part of the defendant to obey it. The onus is on the plaintiff seeking to enforce the foreign judgment to prove the competence of such court to assume jurisdiction; the evidentiary burden may shift during trial. (See *Adams & Others v Cape Industrials PLC*, [199]) Ch. 433 at 550).
 - f. The principle that a foreign court has jurisdiction to give an in personam judgment if the judgment debtor, the defendant in the foreign court, submitted to the jurisdiction of the foreign court is well settled.
 - g. A foreign judgment obtained in circumstances that are contrary to natural justice does not give rise to any obligation of obedience enforceable at common law.
 - h. If a judgment is pronounced by a foreign court over persons within its jurisdiction and in a matter in which it is competent to deal, English courts will never investigate the propriety of the proceedings in the foreign court, unless they offend substantial justice. Where no substantial justice is offended, all that the English court shall look into is the finality of the judgment and



the competence of the foreign court to entertain the sort of case which it did deal with and its competence to require the defendant to appear before it. (See *Pemberton v Hughes*, [1899] 1 Ch 781, 790 - 791 as per Lindley M.R.). Mere procedural irregularity, on the part of the foreign court according to its own rules, is not a ground of defence to enforcement of the foreign judgment. (See *Adams & others v Cape Industrials PLC*, [1990] Ch. 433 at 567).

- i. A defendant, shown to have been subject to the jurisdiction of a foreign court, cannot seek to persuade English court to examine the correctness of the judgment whether on the facts or as to the application by the foreign court of its own law. A foreign judgment is not impeachable merely because it is manifestly wrong. (See *Goddard v Gray*, L.R. 6 Q.B. 139).
 - j. A judgment of a foreign court having jurisdiction over the parties and subject matter – i.e. having jurisdiction to summon the defendants before it and to decide such matters as it has decided – cannot be impeached on merits but can be impeached if the proceedings, the method by which the court comes to a final decision, are contrary to English views of substantial justice.
21. In the case of *Raw Bank PLC v Yusuf Shaa Mohamed Omar & another* [2020] eKLR, the court set out the following conditions that must be met in order to enforce a foreign judgement in Kenya from a non-designated country:
- a. 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 Plaintiff.
 - b. It is open to a defendant to challenge the validity of the foreign judgment under the grounds set out in Section 9 of the [Civil Procedure Act](#).
 - c. A judgment creditor is entitled to summary judgment under Order 36 unless the defendant judgment debtor can satisfy the Court that there is a real prospect of establishing at trial one of the grounds set out in Section 9 of the [Civil Procedure Act](#).
 - d. If the foreign judgment creditor is successful after trial, the judgment creditor will have the benefit of a High Court judgment and the judgment creditor will be entitled to use the procedures of the Kenyan courts to enforce the foreign judgment which will now be executed as a Kenyan judgment.
 - e. The money judgment in the foreign judgment must be final and conclusive. It may be final and conclusive even though it is subject to an appeal. Under Section 9 of the [Civil Procedure Act](#), a foreign judgment is conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title except:
 - i. where it has not been pronounced by a court of competent jurisdiction;
 - ii. where it has not been given on the merits of the case;
 - iii. where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of Kenya in cases in which such law is applicable;
 - iv. where the proceedings in which the judgment was obtained are opposed to natural justice;



- v. where it has been obtained by fraud; or
 - vi. Where it sustains a claim founded on a breach of any law in force in Kenya.
- f. Under Section 4 (4) of the *Limitation of Actions Act*, (Cap 22 of the Laws of Kenya) an action for enforcement of a foreign judgment must be brought in Kenya within 12 years of the date of that judgment.
- g. The foreign court must have had jurisdiction, (according to the Kenyan rules on conflict of laws) to determine the subject matter of the dispute and the parties to the foreign court's judgment and the enforcement proceedings must be the same or must derive their title from the original parties.
- h. The Kenya High Court will generally consider the foreign court to have had jurisdiction where the person against whom the judgment was given:
- i. Was, at the time the proceedings were commenced, habitually resident or incorporated in or having a principal place of business in the foreign jurisdiction; or
 - ii. Was the claimant or counterclaimant in the foreign proceedings; or
 - iii. Submitted to the jurisdiction of the foreign court, or
 - iv. Agreed, before commencement, in respect of the subject matter of the proceedings to submit to the jurisdiction of the foreign court.
 - v. Where the above requirements are established to the satisfaction of the Kenya High Court, the High Court will not re-examine the merits of the foreign court judgment. The foreign judgment will be enforced on the basis that the defendant has a legal obligation as a matter of common law, recognized by the High Court, to satisfy the money decree of the foreign judgment.
22. This being a claim that is not resisted, and the Plaintiff having filed all the required documents, i.e. plaint, verifying affidavit, list of witnesses and their respective statements and having produced the necessary supporting documents which include a certified copy of the judgement from the Superior Court of Worcester County, Massachusetts, a court of competent jurisdiction in the USA, under Civil Case No. 1885CV01797, which is a final, conclusive and enforceable judgement (in the absence of evidence to the contrary), the same meets the criteria observed in the authorities above, and there being no challenge to the jurisdiction as the said judgement is not outside the 12 year statutory period, it is my persuasion that the Plaintiff has proved his case to the required standard.
23. In the result, I enter judgement for the Plaintiff against the Defendant for the following reliefs:
- a. A declaration is issued that the judgement of the Superior Court of Worcester County, Massachusetts issued in Civil Case No. 1885CV01797, that was delivered on 30th March, 2021 in favour of the Plaintiff for the sum of USD 926,599.20 (inclusive of damages and statutory interest) is hereby recognized and enforceable in Kenya.
 - b. Pursuant to (a) above, judgement is hereby entered in favour of the Plaintiff and against the Defendant for the sum of USD 926,599.20 together with interest thereon from the date of filing this suit, at court rates, until payment in full.
 - c. The Defendant shall bear the costs of this suit, which will be on the lower scale, and interest thereon at court rates.



DELIVERED (VIRTUALLY), DATED & SIGNED THIS 16TH DAY OF DECEMBER, 2024.

JOE M. OMIDO

JUDGE

For Plaintiff: Mr. Wamalwa.

For Defendant: No appearance.

Court Assistant: Ms. Njoroge.

