



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL COURTS**

**MISC. APPLICATION NO E 019 OF 2019 (OS)**

**FURAHA EUGENES.....APPLICANT**

**-VERSUS-**

**JOMO KENYATTA UNIVERSITY OF**

**AGRICULTURE AND TECHNOLOGY.....RESPONDENT/JD**

**AND**

**IN THE MATTER OF (CASE NO. RCOM01249/2017/TC/NYGE)**

**FURAHA EUGENES.....PLAINTIFF**

**-VERSUS-**

**JOMO KENYATTA UNIVERSITY OF**

**AGRICULTURE AND TECHNOLOGY.....DEFENDANT**

**RULING**

1. These proceedings relate to registration of a foreign Judgment under the provisions of The Foreign Judgments (**Reciprocal Enforcement**) Act (Chapter 43 of the Laws of Kenya (The Act).
2. Parties have agreed that Furaha Eugenes be granted leave to register in the High Court of Kenya a Judgment delivered and made by The Honorable Justice Hameyimana Telesphore seating in the Commercial Court of Nyarugenge within the Republic of Rwanda on 19<sup>th</sup> October 2017 in Case No. RCOM01249/2017/TC/NYGE. The Judgment is a monetary judgment.
3. There are only two issues in contention. Whether this Court should make orders on interest and if so the rate applicable. Whether this Court should make an order on costs.
4. Although none of the parties pointed this out to Court, the law in respect to the questions raised are found in Section 8 of the Act and in particular subsections (1) and (2) which read:-

**Sec. 8. Effect of registration of judgments**

(1) Subject to this Act, a registered judgment shall, for the purposes of execution, be of the same force and effect as a judgment of the High Court entered at the date of registration.

(2) Subject to this Act, where a judgment for the payment of any monetary sum is registered, the following sums may be recovered upon the registered judgment—

(a) the amount remaining payable under the judgment, including interest and any costs awarded to the judgment creditor, at the date of registration;

(b) interest from the date of registration on that amount, excluding interest and costs referred to in paragraph (a), calculated at the rate applicable to a judgment of the High Court; and

(c) any reasonable costs awarded by the High Court in respect of registration, including the costs of obtaining a certificate or exemplification, or copy of a judgment or a translation thereof, for the purposes of section 5(4).

5. Regarding interest, it is true, as submitted by Mr. Lutta appearing for the Respondent, that the Court at Rwanda made an award on interest worked out at an aggregate sum of USD 19,121 (See paragraph 13 of the said award). To make an award that departs from this is to disturb the judgment in Rwanda. If this Court were to do so then it will not be enforcing the Judgment but in fact reviewing. That said, by dint of Section 8(2) (b) this Court can allow interest from the date of registration on any unpaid amount and where it does, the law prescribes the rate applicable to be that applicable to a Judgment of the High Court. The High Court being a superior court in Kenya (see section 2 on interpretation). Giving effect to these provisions, this Court awards interest at Court rates on the sum that remained unpaid at the date of registration of the Judgment from that date until the date of full payment. In making this order, this Court is also cognizant that the objective of granting interest is to compensate a litigant for delayed payment of a decretal sum.

6. The Rwandese Court also awarded costs to the Applicant Under various heads being 100,000 Rwf for case followup, 70,000 Rwf as lawyer fee and 50,000 Rwf for Court Fees. Rwf is the abbreviation for Rwanda Francs. So, quantum of the costs in respect to the received Judgment is really settled. However, the Applicant has suffered further costs in respect to registration of the Judgment in Kenya. Section 8(2)(c) contemplates that such costs will be incurred and I will therefore be awarding them.

7. Ultimately the orders of the Court are:-

a) The Applicant shall have interest at Court rates of the High Court of Kenya on unpaid sums at the date of registration with effect from that date until payment in full.

b) The Applicant shall have reasonable costs and disbursements in respect of registration of the Judgment and the disbursements shall include, but will not be limited to, costs of copying the Judgment and/or making a translation thereof.

**Dated, Signed and Delivered in Court at Nairobi this 18<sup>th</sup> Day of October 2019.**

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

**Cherop for Osudwa for Plaintiff**

**Lutta for Respondent**

**Court Assistant: Nixon**