



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND TAX DIVISION

HCCC NO. E358 OF 2019(O.S.)

TUI UK LIMITED.....JUDGMENT CREDITOR

VERSUS

SUN 'N' SAND BEACH HOTEL LIMITEDJUDGMENT/DEBTOR

RULING

1. Through the Originating Summons (O.S.) dated 12th October 2019, the judgment Creditor (JC) seeks orders that:

1. The judgment given in Claim No, A90LS582 in the High Court of Justice, Queen's Bench Division, Leeds District Registry on the 22nd day of January 2015 be registered pursuant to the Foreign Judgments (Reciprocal Enforcement) Act.

2. The costs of this application be paid by the judgment debtor and included in the decretal amount.

2. The Originating Summons is supported by the affidavit of the Judgment Creditor's Solicitor, **Nafisha Alli**, who avers through a judgment of the English High Court of Justice, Queen's Bench Division, Leeds District Registry dated the 22nd day of January, 2015 it was adjudged that the Judgment Debtor do pay to the Judgment Creditor sterling £96,082.09 plus interest and costs assessed at sterling £20,676.50. A copy of the Certificate of Judgment is attached to the supporting affidavit as annexure "NA2". She further avers that:

a. The Judgment Creditor is entitled to enforce the judgment.

b. The judgment has not been satisfied.

c. The judgment is a judgment to which Section 3(1) (a) of the Foreign Judgments (Reciprocal Enforcement) Act (hereinafter "the Act") applies in that it is a judgment of a designated court in civil proceedings whereby a sum of money is made payable;

d. The judgment is a final and conclusive as between the Judgment Creditor and Judgment Debtor; no appeal is pending against the judgment; and the time for appealing has expired.

e. The judgment does not fall within any of the classes of cases in which a judgment may not be ordered to be registered under Section 3(3) of the Act;

f. The judgment can be enforced by execution in England and if the judgment is registered, the registration would not be liable to be set aside under Sections 10 or 11 of the Act;

g. The Judgment Debtor was served with the process in the action in Kenya personal service on the Judgment Debtor.

h. The judgment debt arises from a contract (the "Contract") entered into by the Judgment Creditor and the Judgment Debtor under which the Judgment Debtor was to provide accommodation to customers who booked package holidays with the Judgment Creditor. The contract between the Judgment Creditor and the Judgment Debtor is not produced to me and marked "NA 3". The submission to the jurisdiction of the English Courts is set out in Condition 8.2 on page 5 of the exhibit "NA3".

i. The accommodation to be provided by the Judgment Debtor was for the benefit of Mrs. Sandra Victoria Cooper (the customer) who was on a package holiday organized by the Judgment Creditor in March 2009. On 12th March 2009 the customer fell on a wet sloping corridor within the hotel complex and sustained a crush fracture to the body to the first and fourth lumbar vertebrae.

j. The customer claimed against the Judgment Creditor for the injuries alleging that the accident was caused by the negligent operation of the hotel for which the Judgment Creditor was responsible in accordance with the UK Package Travel, Package Holidays and Package Tour Regulations 1992. The claim was settled prior the trial. The settlement was reached after several requests to engage with negotiation with the hotel went substantively unanswered and the only witness for the hotel confirmed he could not be available to give evidence at trial.

k. The judgment Creditor issued a Part 20 additional claim out of the proceedings issued by the customer. These proceedings sought an indemnity against the Judgment Creditor in respect of the Customer's claim. The Judgment Debtor however failed to respond to the proceedings and the Judgment Creditor therefore obtained judgment against the Judgment Debtor on 22nd January 2015.

l. The balance due as at 24th June 2015 was sterling £120,736.59 which includes interest of sterling £ 3,978.00 from the date of the judgment on 22nd January 2015 with further interest accruing from 24th June 2015 at a rate of 8 per cent per annum until payment in full.

3. I have carefully considered the Originating Summons and the supporting affidavit together with the oral submissions made by **Mr. Ondieki**, learned counsel for the Judgment Creditor, during the hearing of the application.

4. I am satisfied that the application satisfies the conditions governing the registration of Foreign Judgment as set under the Act which under Section 5(2) dispenses with the requirement of service where the Judgment Debtor was personally served with court process in the original action.

5. I also note that the Judgment Creditor produced the Certificate of Judgment of the High Court of Justice of England as exhibit "NA1" to the supporting affidavit.

6. I am therefore satisfied that the Foreign Judgment is capable of enforcement in England and that the application has been filed within the 6 years period from the date of judgment as is provided for under Section 5(1) of the Act.

7. Consequently, I allow the application as prayed. I also award the costs of the application to the Judgment Creditor and direct that the notice of registration of the judgment be served on the Judgment Debtor as provide for under Section 5(3) of the Act.

Dated, signed and delivered in open court at Nairobi this 9th day of December 2019.

W. A. OKWANY

JUDGE

In the presence of:

Mr. Ondieki for the applicant

Court Assistant – Sylvia