



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & ADMIRALTY DIVISION AT MILIMANI LAW COURTS**  
**CIVIL SUIT NO 96 OF 2014 (OS)**

**IN THE MATTER OF**  
**FOREIGN JUDGMENT (RECIPROCAL ENFORCEMENT) ACT**

**AND**

**IN THE MATTER OF**

**THE JUDGMENT DELIVERED ON THE 7<sup>TH</sup> DAY OF JULY, 2010 AT THE HIGH COURT OF UGANDA AT KAMPALA, (CIVIL SUIT NO 143 OF 2008) BY HONOURABLE LADY JUSTICE M.S. ARACHI AMOKO**

**BETWEEN**

**ELIZABETH NAMUTEBI.....APPLICANT/JUDGMENT CREDITOR**

**Versus**

**THREWAYS SHIPPING SERVICES (K) LTD....RESPONDENT/JUDGMENT-DEBTOR**

**RULING**

**Enforcement of foreign judgment**

[1] This application is for registration and enforcement of a foreign judgment under the provisions of the **Foreign Judgment (Reciprocal Enforcement) Act**. It is expressed to be brought under Order 37 Rule 14 of the **Civil Procedure Rules** and sections 3(1) (a), 3(2) (b); 5(1), 5(2) (a) (i) and (b), (c)(i) and 2(d), (e); 7(1) and (2); 8(2) (b), (b) and (c) of the **Foreign Judgment (Reciprocal Enforcement) Act**; and rules 2(1), 3 and 4 of the **Foreign Judgment (Reciprocal Enforcement) Rules**. The application is supported by the affidavit of **ELIZABETH NAMUTEMBEI** and the annexures thereto. From the averments by the Applicant, I should state that the Applicant is a holder of a judgement delivered on 7<sup>th</sup> of July, 2010 by Honourable Lady Justice M.S. Arach Amoko of the High Court of Uganda; which is a Designated Court under the **Foreign Judgment (Reciprocal Enforcement) Act**, as it is a superior court of a reciprocating country, Uganda, which is specified in the in the SCHEDULE in the FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) (EXTENSION OF ACT) ORDER, 1984 as declared by the

order issued pursuant to section 13 of the **Foreign Judgment (Reciprocal Enforcement) Act**. It is that foreign judgment the Applicant is asking the court to order for its registration and execution in Kenya.

[2] The application is made *ex parte* apparently because, from the disclosures made the judgment-debtor appeared in the original suit and or was represented by legal counsel. The application is accompanied by; 1) an affidavit in support thereof; 2) a photocopy of the Decree; 3) a photocopy of Ruling on Taxation; and 4) a photocopy of the judgment. This application is governed by section 5 of the **Foreign Judgment (Reciprocal Enforcement) Act**, and more specifically 5(4) which requires that the application should be accompanied by certain pertinent documents. The specific requirements are discernible from Section 5(4) below:

*An application for registration of a judgment under subsection (1) shall—*

- a. *be accompanied by a certificate in the form set out in the Schedule or to the same effect issued from the original court under its seal and signed by a judge or registrar thereof or by an affidavit to the same effect;*
- b. *have attached thereto the judgment or the exemplification or a certified or duly authenticated copy thereof and, where the judgment is not in the English language, certified by a notary public on the Registrar of the original court or authenticated by affidavit;*
- c. *be accompanied by an affidavit stating—*
  - i. *that, at the date of application, the judgment has not been satisfied or, as the case may be, the sums or items of movable property in respect of which the judgment remains unsatisfied;*
  - ii. *that, at the date of application, the judgment can be enforced by execution in the country of the original court;*
  - iii. *where, by virtue of section 6(5), the judgment may be registered only in respect of certain of its provisions, the provisions in respect of which it is sought to register the judgment;*
- d. *unless otherwise ordered by the High Court, be accompanied, in the case of a judgment given by a superior court of a Commonwealth country, by a certificate under the seal and signed by a judge or registrar thereof certifying that the court is a superior court in that country;*
- e. *be accompanied by such other evidence as may be prescribed.*

[3] Other than the application and the affidavit in support thereof, all the other documents annexed to the application are mere photocopies which I do not think in law could be said to be the legal documents or exemplifications or certified or duly authenticated copies of the original legal documents of the Designated Court of Uganda. I can see a rubber stamp of sort tending to certify the documents as true copies of the original but the grave error that the Applicant committed is that it annexed photocopies of the purportedly certified documents instead of the certified documents themselves. That is problematic and the application does not, therefore, meet the requirements of the law. It should be understood that the Applicant is seeking to use the process of this court to enforce a foreign judgment, and ought to have complied with the law strictly if it needs to have the advantage of the judicial process of this country. That insistence of adherence to the law is undergirded by the principles of international co-operation among states; and, the provisions of the **Foreign Judgment (Reciprocal Enforcement) Act** are in the nature of international co-operation amongst states as it enables the country to commit its judicial process in the enforcement of judgments emanating from a judicial system of another state with who the country shares a mutual reciprocity on enforcements of judgments. The said statutory law, therefore, provides the legal regime, tools and mechanism to promote and actualize the cooperation among sovereign states in enforcement of foreign judgments just like the other laws in Kenya on international co-operation, say; Mutual Legal Assistance Act; Proceeds of Crime and Anti-Money Laundering Act, and others. But what is important is that, any such co-operation, including registration and execution of foreign judgments under the **Foreign Judgment (Reciprocal Enforcement) Act**, must be done within the accepted practice in international or regional cooperation amongst states, which requires strict adherence with the domestic laws of

requested state on mutual legal or judicial assistance. In one sense, the practice and requirement of the law preserves the integrity of the legal process of the requested State and also guarantees the legal probity of the assistance provided thereto; in this case, registration and execution of a foreign judgment. In another sense, the practice also protects the rights of the parties in the original suit. See what is ordained in section 8 of the **Foreign Judgment (Reciprocal Enforcement) Act** that...*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* and one will appreciate that, by that pronouncement, the coercive process of execution in the suit is transported and done in Kenya. If that be the nature of the proceeding before me, the requirement that certain pertinent documents must be filed in a particular form is not a mere technicality that can be depreciated by Article 159(2) (d) of the Constitution, rather, it is substantive and mandatory requirement which ensures that the court is acting on the correct and authentic documents. Accordingly, I admit the serious deficiencies and omissions in the application herein cannot be overlooked by a court of law without exhibiting absolute contempt of the Constitution, the legislative intent in, the letter and spirit of the **Foreign Judgment (Reciprocal Enforcement) Act**. In sum, before the court can commit its process to the citizen of or another country in enforcing a foreign judgment, the person applying must comply with the laws of the land on registration and execution of foreign judgments.

[4] The upshot is that, the application herein wholly violates the provisions of **Foreign Judgment (Reciprocal Enforcement) Act**. But in the interest of justice I am persuaded to exercise my discretion leniently under the Act, and instead of dismissing the application, I direct the Applicant:

- a) To file a complaint application for registration and execution of the foreign judgment herein within 30 days; with all the documents required under the **Foreign Judgment (Reciprocal Enforcement) Act**,
- b) The Applicant to serve the compliant application together with a summon on the judgment-debtor to appear and be heard on the application filed pursuant to this order; and
- c) Of course, service of summons and the application upon the judgment-debtor shall be served in accordance, *mutatis mutandis*, with order V of the Civil Procedure Rules.

**Dated, signed and delivered in open court at Nairobi this 14<sup>th</sup> day of May, 2014**

**F. GIKONYO**

**JUDGE**