

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**HCCOMM NO. E239 OF 2025**  
**(ORIGINATING SUMMONS)**

IN THE MATTER OF THE FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT (CAP 43)

AND

IN THE MATTER OF THE JUDGMENT DELIVERED ON THE 16<sup>TH</sup> JANUARY 2024 AT THE COMMERCIAL COURT OF RWANDA AT KIGALI, IN (PUBLIC CASE NO. RCOMA 0198/2023/TC (before THE HONOURABLE JUSTICE NOHELI EMMANUEL (SE)

AND

IN THE MATTER OF THE JUDGMENT DELIVERED ON THE 9<sup>TH</sup> FEBRUARY 2024 AT THE COMMERCIAL HIGH COURT OF RWANDA AT KIGALI NO. RCOMA 00048/2024/HCC (before HON. JUSTICE BYUKUSENGE MARIE CLAIRE (SE)

BETWEEN

ALAIN KABEJA son of JOSEPH KABEJA and

AMERITHA NYARANA SHYITISI .....

CLAIMANT

VERSUS

BILLION TRADERS FX ..... 1<sup>ST</sup>

RESPONDENT

SEZISONI MANZI DAVIS ..... 2<sup>ND</sup>

RESPONDENT

**RULING**

1. The claimant filed an Originating Summons dated 28<sup>th</sup> March 2025 under the provisions of Order 37 Rule 14 of the Civil Procedure Rules, 2010, seeking the following orders;-

- (1) That the Judgment delivered on the 16<sup>th</sup> January 2024 at the Commercial Court of Rwanda at Kigali, in (PUBLIC CASE NO. RCOMA 01898/2023/TC) before the Honourable Justice NOHELI EMMANUEL (SE); BE REGISTERED AND EXECUTED in Kenya;
- (2) That the Judgment delivered on the 9<sup>th</sup> February 2024, at the Commercial High Court of Rwanda at Kigali No. RCOMA 00048/2024/HIC before Honourable Justice BYUKUSONGE MARIE CLAIRE (SE) (sic),
- (3) That this Honourable Court be pleased to grant such further or other relief as may be just in the circumstances; and
- (4) That the respondents be condemned to pay the costs of this application and the incidentals thereto.

2. The Originating Summons is anchored on the supporting affidavit of Mr. Alain Kabeja son of Joseph Robert Kabeja and Emeritha Nyarana Shyitisi of Kigali, Rwanda.

3. He averred that the respondent, who is the judgment debtor, has offices situated at Amahoro village Kimihurura cell, Kimihurura Sector, Gasabo District in Kigali city.

4. He stated that he is entitled to enforce the two (2) Judgments annexed to his affidavit which are yet to be fully satisfied, and that the Foreign Judgments (Reciprocal Enforcement) Act, (Cap 43), applies to the said Judgments.
5. Mr. Kabeja deposed that the Judgments are for the payment of sums of money owed to him as the judgment creditor, and that they are final and conclusive as to the parties herein.
6. The applicant listed down the orders made by the Trial Court. He stated that the respondent appealed from the said decision and a Judgment was delivered on 9<sup>th</sup> February 2024, at the Commercial High Court of Rwanda at Kigali No. RCOMA 00048/2024/HCC before the Honourable Justice Bykusenge Marie Claire (se), as per the orders listed in the affidavit.
7. The applicant deposed that he is aware through his own knowledge and advice from the relevant authorities including the respondent's bank in Rwanda that the 2<sup>nd</sup> respondent has shifted to Kenya together with his assets and money, and that is the basis of seeking orders to register and enforce the stated Judgments in the Republic of Kenya.
8. He also deposed that his Counsel had advised him that if the Court allows his application, he should be able to institute garnishee proceedings against the judgment debtor, to attach the monies in his bank accounts as provided for in the Civil Procedure Act (Cap 21), and in Order 23 Rule 1 of the Civil Procedure Rules, 2010.

#### **ANALYSIS AND DETERMINATION.**

9. I have considered the application filed by the applicant herein, the supporting affidavit and the two Judgments attached thereto. The issue for determination is whether this Court should recognize and enforce the two (2) Judgments from Courts in Kigali, Rwanda.

10. Section 3(1) of the Foreign Judgments (Reciprocal Enforcement Act), Cap 43, Laws of Kenya provides as follows –

***Subject to subsections (2) and (3) this Act applies with respect to;-***

***(a) A Judgment or Order of a designated Court in civil proceedings whereby a sum of money is made payable including an Order for the payment of a lump sum as financial provisions for or maintenance of, a spouse or a former or reputed spouse or a child or other person who is or was dependent of another.***

***(b) .....***

***(c) .....***

***(d) A Judgment given in any Court on appeal against a Judgment or Order of a designated Court referred to in paragraphs (a) to (c).***

***(e) A Judgment of a designated Superior Court for the costs of an appeal from the Subordinate Court, whether or not a designated Court, or from an award referred to in paragraph (f); and***

***(f) .....***

11. Having perused the Judgment delivered by Hon. Justice Noelle Emmanuel on 16<sup>th</sup> January 2024, she entered Judgment against the 2<sup>nd</sup> respondent herein, after which the said respondent appealed to the Commercial High Court at Kigali, Rwanda. The appeal was heard by Hon. Justice Byukesenge Marie Claire, who upheld the decision of the Trial Court and awarded costs to the applicant herein.

12. The Foreign Judgments (Reciprocal Enforcement) Act in Section 5(1) provides as follows –

*Where a judgment to which this Act applies has been given in a designated Court, the judgment creditor may apply to have the judgment registered within six years of the date of the judgment or, where there has been procedures by way of an appeal against the judgment, of the date of the last judgment in the proceedings.*

13. Sub-section 4 thereof states that an application for registration of a Judgment under sub-section (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 English language certified by 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 the 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 the 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.*** (Emphasis added).

14. I have keenly looked at the documents filed by the applicant in support of his application. He filed an affidavit to which he annexed the Trial Court's Judgment and the decision of the appellate Court (High Court) at Kigali, Rwanda.
15. The applicant has however not complied with the provisions of Section 5(4)(a) of the Foreign Judgments (Reciprocal Enforcement) Act, which commands an applicant to file a certificate in the form set out in the Schedule to the said Act or to the same effect, issued from the Original Court under its seal and signed by a Judge or Registrar thereof or an affidavit to the same effect. He has also not complied with Section 5(4)(d) of the said Act.
16. My understanding of the above provisions is that the certificates contemplated therein must be from the Trial Court and the Appellant Court at Kigali, Rwanda, where the case was heard and determined.
17. In this instance, since Rwanda is a Commonwealth Country, Section 5(4)(a) of the Foreign Judgments (Reciprocal Enforcement) Act must be read conjunctively with Section 5(4)(d) of the said Act, and not disjunctively.
18. The defect in not complying with Sections 5(4)(a) and 5(4)(d) of the Foreign Judgments (Reciprocal Enforcement) Act, in my view, cannot be cured under the provisions of Article 159(2)(d) of the Constitution of

Kenya. The said defect calls for compliance with the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, as outlined in paragraph 15 of this Ruling.

19. Further, I note that prayer No. 2 of the application as drafted is incomplete as no order has been sought.
20. In filing the instant application, the applicant's intention was to enforce the two (2) Judgments from Kigali, Rwanda, to execution stage, as the applicant in his affidavit intimated to embarking on garnishee proceedings after registration of the foreign Judgments.
21. In **Jayesh Hasmukh Shah vs Navin Haria & another** (2016) eKLR, a decision of the Court of Appeal that was cited with approval in the case of **Keshavji Ramji R. Ladha v Bank of Credit and Commerce International** – SA (BCCI) Civil Appeal No. 44 of 2024, the Court stated as follows –

*It now trite in civil litigation in this jurisdiction that a judgment of whatever nature, whether foreign or otherwise, is good until otherwise declared. But it is not in its form as a judgment per se that it is capable of being enforced. It has to take the shape of another procedural document before it can reach any execution stage.*

22. From the above decision, in order for the applicant herein to reach the execution stage by garnishee proceedings or otherwise, he has to bring his application for recognition and enforcement of the two (2) Judgments from the Courts in Kigali, Rwanda, in compliance with the law.
23. From the analysis I have made, it is evident that the foreign Judgments in issue cannot proceed to recognition and enforcement stage, before full

compliance with the provisions of the Foreign Judgments (Reciprocal Enforcement) Act, Cap 43 Laws of Kenya.

24. Due to the apparent defect in the application, it is hereby struck out, with no order as to costs.

It is so ordered

**DATED, SIGNED and DELIVERED at NAIROBI on this 23rd day of January 2026. Ruling delivered through Microsoft Teams Online Platform.**

**NJOKI MWANGI**

**JUDGE**

**In the presence of:-**

Mr. Mabago for the applicant

No appearance for the respondents

Ms B. Wokabi - Court Assistant.