

**REPUBLIC OF KENYA**  
**IN THE EMPLOYMENT & LABOUR RELATIONS COURT AT**  
**NAIROBI**  
**CAUSE NO. E845 OF 2024**

**CAROLINE SOPHIA**

**DUNAISKI.....CLAIMANT**

**VERSUS**

**KENYA AIRWAYS PLC.....**

**.....RESPONDENT**

**RULING**

1. For determination is the Claimant's Notice of Motion application dated 4<sup>th</sup> July, 2024, brought pursuant to Section 9 of the Civil Procure Act, Sections 3, 12, and 20 of the Employment and Labour Relations Court, and Rule 45 of the Employment and Labour Relations Court (Procedure) Rules 2024, where she seeks the following reliefs: -

- i. Spent
- ii. Spent
- iii. THAT a declaration that the judgment delivered on 22/12/2021 by the First Section of the Labour Court in the Courts of Betas in Luanda in the Republic of Angola in Case No. 508/2015-K, Order No. 34 between Caroline Sophia Dunaiski vs Kenya Airways Ltd be and is hereby

adopted as conclusive determination of the employment and labour relations dispute between the Claimant and Respondent herein relating to employment of the Claimant by the Respondent as a Sales and Station Manager in Angola on 30/08/2010 and termination of thereof on 6th May 2014 as determined by the above said foreign court and judgment.

iv. THAT judgment delivered on 22/12/2021 by the First Section of the Labour Court in the Courts of Betas in Luanda in the Republic of Angola in Case No. 508/2015-K, Order No. 34 between Caroline Sophia Dunaiski vs Kenya Airways Ltd be and is hereby recognized, adopted as a judgment and decree of this Court on the dispute between parties set out therein, enforced and or executed against the Respondent as the judgment and decree of this Court in the following terms:

a) The Respondent be and is hereby ordered to pay the Claimant salary arrears and benefits in the sum of KZ.108,052,680.00 being the accrued salary arrears and benefits of the Claimant at the rate of KZ.900,439.00 for a period of 10 years from March 2014 with a variation that the said amount be paid until the 301th March, 2024 when the Claimant attained retirement age of 65 years in

USD currency at the prevailing currency exchange rate.

b) The Court costs to be paid by the Defendant herein at the rate and scale prescribed by Advocates' Remuneration Order, 2017 as legislated under the Advocates Act, Cap 16, Laws of Kenya.

v. THAT Interest be awarded on (4) above at Court rates (14% p.a) from 22-12-2022 until payment in full.

vi. THAT the costs of this application and suit be paid by the Respondent.

2. The application is supported by grounds on the face thereof and the affidavit sworn by **Caroline Sophia Dunaiski**, the Applicant herein. The crux of the matter is a foreign judgment delivered on 12 December 2021 by a Labour Court in Luanda, Republic of Angola, in an employment dispute between the Claimant and the Respondent.

3. It is averred that the dispute arose from the Claimant's alleged unfair, unlawful, and wrongful summary dismissal on 30<sup>th</sup> August 2020 from her position as Sales and Station Manager at the Respondent's office in Angola.

4. The Applicant avers that the claim was filed before the Angolan Labour Court, which had proper jurisdiction under the General Labour Law of Angola, and the case was heard

and determined on its merits and with finality. It is her position that there is no pending or prior appeal or review seeking to set aside the subject judgment, and it therefore constitutes a conclusive determination of the employment dispute between the parties.

5. Further, the Applicant states that there is no legal impediment under Section 9 of the Civil Procedure Act to the adoption and enforcement of the foreign judgment as a judgment and decree of this Court.
6. The Claimant states that following delivery of the judgment, the Respondent, whose principal offices, assets, and business operations are based in Nairobi, closed its offices in Angola around April 2020 and no longer maintains any presence or assets there, and as a result, execution of the judgment and decree in Angola has become impracticable, thereby necessitating the present application and suit for enforcement in this Court.
7. It is her case that it is therefore just and equitable that the Application be granted.
8. The Respondent opposed the Motion vide a Replying affidavit sworn by Moses Ombokh, a Senior Manager, Employee Relations and Staff Welfare of the Respondent on 21<sup>st</sup> October, 2025.

9. The Respondent states that it is unclear from the Motion what specific relief the Claimant seeks, on the basis that paragraphs 3 and 4 of the Motion indicate that the Claimant is asking the Court to recognize and adopt the judgment rendered by the Labour Court of Belas in Luanda, Republic of Angola (“the Angolan Judgment”) as a conclusive determination of the dispute between the parties. It avers further that these are the same reliefs sought in the main Claim.
10. The Claimant further avers that the Application fails to disclose the legal framework or procedure under which it has been brought. It avers that enforcement of a foreign judgment can only be pursued through a substantive suit or claim, not by way of a standalone Notice of Motion, hence the procedure adopted is therefore defective, irregular, and contrary to the Civil Procedure Rules.
11. The Respondent maintains that recognition and adoption of foreign judgments is governed by the **Foreign Judgments (Reciprocal Enforcement) Act (Cap 43, Laws of Kenya)**, which sets out a specific statutory procedure that requires the filing of proper pleadings, authentication of the foreign judgment, and proof that the foreign court had competent jurisdiction and complied with due process. It

avers that these statutory requirements cannot be properly satisfied through a mere Notice of Motion.

12. The Respondent states that the Claimant has already filed a Memorandum of Claim seeking recognition and enforcement of the Angolan Judgment, and it has filed a Memorandum of Response opposing the same on the grounds that the judgment is not a conclusive determination of the dispute. It avers that the Court has issued directions regarding the filing of witness statements and documents, which the parties are complying with.
13. The Respondent further contends that the Claimant's Motion is based on the mistaken belief that the Angolan Judgment is final and conclusive. It states that under Section 9 of the Civil Procedure Act, a foreign judgment is not conclusive if it was not determined on the merits or if the proceedings violated principles of natural justice.
14. The Respondent states that it believes that the Motion is an application for summary judgment, which can only be granted where there are no bona fide triable issues. The Respondent further maintains that its Memorandum of Response raises substantial triable issues requiring full hearing and determination, and therefore, the application should not be summarily allowed.

15. It is the Respondent's position that the Claimant was employed under a fixed-term contract that lapsed in August 2015, a fact not disputed. That this notwithstanding, the Angolan Court awarded salary from March 2014 until March 2024, the claimed date of reinstatement, when the contractual relationship had ended in August 2015, thereby disregarding established contractual principles.

16. The Respondent contends that the Angolan Judgment awarded the Claimant nine years' salary beyond the expiry of her fixed-term contract, effectively compensating her for a period during which she rendered no services. It states that even if the termination were assumed to have been unlawful, such an award is excessive and punitive in nature, and therefore, the Angolan Judgment cannot be deemed a conclusive determination between the parties.

17. The Respondent further objects to the Claimant's attempt to have the costs awarded in the Angolan Judgment computed under the Kenyan Advocates Remuneration Order, 2017 (under the Advocates Act, Cap 16), instead of first having those costs assessed or tabulated in Angola prior to seeking recognition and enforcement in Kenya. Additionally, the Respondent maintains that the issues raised in its Memorandum of Response require a full trial, including presentation of evidence and cross-examination, and the

same cannot properly be determined through a Motion or by way of summary judgment.

18. The Respondent avers that the application, if treated as one for summary judgment, does not meet the required legal threshold. The Respondent further denies that it closed its Angolan operations or removed assets to obstruct execution of the Judgment, stating that the closure was unrelated to the Claimant.

19. The Respondent states that the application is procedurally defective, lacks merit, and amounts to an abuse of the court process, and therefore prays that it be dismissed with costs.

20. Parties urged the objection by way of written submissions, and submissions were received from both parties and have been duly considered.

### **Determination**

21. From the pleadings, the affidavits on record, and the parties' submissions, the singular issue that arises for determination is whether the Claimant's Notice of Motion is procedurally competent for purposes of recognition and enforcement of a foreign judgment.

22. The recognition and enforcement of foreign judgments is governed by the **Foreign Judgments (Reciprocal Enforcement) Act, Cap 43**, which applies to designated

reciprocating countries; and Section 9 of the Civil Procedure Act, Cap 21, which embodies the common law position on conclusiveness of foreign judgments where Cap. 43 does not apply.

23. The Claimant seeks to enforce a judgment from the Labour court of Angola, which is currently not a reciprocating country. The Respondent argues that enforcement of a foreign judgment can only be undertaken through a substantive suit and not by way of a Notice of Motion.

24. The record shows that the Claimant has already filed a Memorandum of Claim seeking recognition and enforcement of the Angolan Judgment, and the Respondent has filed a Memorandum of Response, and directions have issued on the filing of witness statements and documents.

25. In the circumstances, the Motion as correctly submitted by the Respondent appears to seek, in effect, a summary determination of the same reliefs sought in the main Claim. The Court in ***D.T. Dobie & Company (Kenya) Ltd v Muchina*** cautioned that where triable issues are disclosed, a matter ought not to be summarily determined without affording parties a full hearing.

26. Further, recognition of a foreign judgment under Section 9 of the Civil Procedure Act requires proof of the competence

of the foreign court, finality of the judgment, that the judgment was given on the merits, and absence of statutory exceptions.

27. These are all evidentiary matters that ordinarily require formal proof, and a bare Motion as the one filed by the Respondent, without a full evidentiary hearing where contested issues arise, is generally inadequate to conclusively determine such questions.

28. Further, although the Claimant asserts that the judgment was final and, given on the merits, the Respondent on its part disputes this assertion, and further challenges the substance of the award, particularly the grant of approximately nine years' salary beyond expiry of a fixed-term contract. These objections, in my view, fall squarely within the exceptions contemplated under Section 9 of the Civil Procedure Act.

29. It therefore follows that at this stage, the Court cannot conclusively determine without hearing evidence whether the Angolan proceedings meet the threshold of natural justice, whether the judgment was indeed on the merits, and whether any statutory exceptions apply.

30. In the circumstances, I find and hold that the procedure adopted by the Claimant/Applicant, seeking substantive

recognition and enforcement orders via Motion while the main Claim remains pending, is irregular and premature.

31. In the upshot, the Claimant's Notice of Motion dated 4th July 2024 is devoid of merit and is hereby dismissed.

32. The main Claim shall proceed to a full hearing on the merits.

33. Costs of the application shall abide the cause.

34. It is so ordered.

**SIGNED, DATED, AND DELIVERED BY VIDEO-LINK AND IN COURT AT NAIROBI THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2026.**

**C. N. BAARI**  
**JUDGE**

**Appearance:**

Mr. Kinyanjui h/b for Mr. Litoro for the Claimant

Ms. Nimo Adan h/b for Mr. Adan for the Respondent

Ms. Esther S-CA.