



Mwachikobe v Brookside Dairy (T) Limited (Employment and Labour Relations Miscellaneous E483 of 2025) [2026] KEELRC 1264 (KLR) (12 May 2026) (Ruling)

Neutral citation: [2026] KEELRC 1264 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
EMPLOYMENT AND LABOUR RELATIONS MISCELLANEOUS E483 OF 2025**

HS WASILWA, J

MAY 12, 2026

BETWEEN

ALLY KOMBO MWACHIKOBE APPLICANT

AND

BROOKSIDE DAIRY (T) LIMITED RESPONDENT

RULING

1. The Applicant/Judgment Creditor filed a Notice of Motion application dated 26th November 2025 seeking ORDERS THAT: -
 - a. Spent
 - b. The judgment and decree in Labour Revision No. 645 of 2019 from the High Court of Tanzania Labour Division at Dar es Salaam be registered for purposes of execution.
 - c. The Applicant be awarded costs of the application.

Applicant's Case

2. The Applicant's case is that he was unfairly terminated by the Respondent and consequently instituted a labour dispute before the Commission for Mediation and Arbitration where the decision was rendered in his favour awarding him compensation equivalent to 24 months' salary amounting to Tshs. 43,124,400.
3. He avers that the Respondent/Judgment Debtor, being dissatisfied with the said decision, filed a revision before the High Court of Tanzania, Labour Division at Dar es Salaam before Hon. Aboud, J., which partially succeeded and reduced the compensation to 12 months' salary valued at Tshs. 21,562,200.



4. The Applicant asserts that the High Court of Tanzania Labour Division further ordered the Respondent to pay him transport costs and allowances from Arusha to Dar es Salaam which had been computed during the proceedings before the Commission for Mediation and Arbitration at Tshs. 6,810,000.
5. He contends that the said judgment remains valid and binding as no appeal was preferred to the Court of Appeal of Tanzania and thus the decision of the High Court Labour Division in Labour Revision no. 645 of 2019 subsists.
6. It is the Applicant's case that following the said judgment, the Respondent/Judgment Debtor closed its business operations in Tanzania and relocated to Kenya without satisfying the decree and left no attachable assets within Tanzania.
7. The Applicant avers that no part of the decretal sum has been paid to date and therefore seeks registration of the judgment for purposes of enforcement for the sum of Tshs. 28,372,200 being compensation and transport costs.
8. He avers that the Respondent/Judgment Debtor is currently resident in Ruiru, Kiambu County within the Republic of Kenya and that all attempts to have the decree satisfied have been unsuccessful.
9. The Applicant contends that the judgment sought to be registered is duly authenticated and is capable of execution upon registration before this Court and that there exists no other means of realizing the decretal sum save through foreign execution in Kenya.
10. It is the Applicant's case that he has been in the employment of the Respondent since 2007 initially as a Sales Person and was subsequently seconded to Tanzania as a Sales Supervisor following the establishment of Brookside Dairy Tanzania Limited in 2011.
11. He avers that the secondment was temporary and did not terminate his employment relationship with the Respondent but was intended to support the operations of the Tanzanian subsidiary while retaining his original employment status.
12. The Applicant asserts that during the secondment period, he continued to receive instructions from the Respondent, submitted reports, undertook audits and travelled back to Kenya on several occasions to report on progress and account for his work.
13. He maintains that he remained under the control and supervision of the Respondent and undertook assignments at its instance including facilitation of imprest accounting and payroll inputs.
14. It is the Applicant's case that there exists a direct relationship between the Respondent and Brookside Dairy Tanzania Limited, the Respondent being the holding company and the Tanzanian entity its subsidiary with common directors, shareholders and company secretaries.
15. The Applicant avers that the Respondent exercised control over the Tanzanian entity including hiring, supervision, disciplinary control and termination of employees.
16. He contends that his status as a seconded employee was not affected by any insolvency proceedings involving the Tanzanian subsidiary and that his employment relationship with the Respondent remained intact throughout.
17. It is therefore the Applicant's case that it is in the interests of justice that the application be allowed to enable him realize the fruits of his judgment through registration and enforcement of the foreign decree.



Respondent/Judgment Debtor's Case

18. In opposition to the application, the Respondent filed a replying affidavit dated 16th January 2026 and a supplementary affidavit dated 16th March 2026, both sworn by its Legal Officer, Jacqueline Hinga.
19. It is the Respondent's case that Brookside Dairy Limited, a company registered in Kenya, is completely distinct from Brookside Dairy Tanzania Ltd and that there exists no link whatsoever between the two entities.
20. It avers that the Applicant's application seeking to enforce a judgment against it on account of obligations allegedly owed by Brookside Dairy Tanzania Ltd ought to be declined on grounds that it is not the parent company of the said Tanzanian entity, it is not the judgment debtor in the impugned judgment, and was neither a party to nor participant in the proceedings before the Tanzanian courts.
21. The Respondent asserts that it did not submit to the jurisdiction of the Tanzanian court; it did not appear in the proceedings; it was never served with any process in the original action; and it did not at any time have an office, place of business, branch or appointed agent in Tanzania to receive service on its behalf.
22. The Respondent therefore avers that it does not qualify as a judgment debtor within the meaning of the *Foreign Judgments (Reciprocal Enforcement) Act*, Cap 43 Laws of Kenya.
23. The Respondent states that it has established that Brookside Dairy Tanzania Ltd has since been wound up and a liquidator appointed to attend to the affairs and creditors of the said company.
24. It is the Respondent's case that it is in no way culpable, liable or responsible for the claims made against Brookside Dairy Tanzania Ltd, therefore, the application against it ought to be dismissed with costs.
25. The Respondent further asserts that the proper parties to the proceedings are the Applicant and Brookside Dairy Tanzania Ltd and contends that no effort has been made to join it in the proceedings despite the Applicant seeking to enforce the foreign judgment against it.
26. The Respondent contends that the Applicant was not its employee and denies that it ever seconded the Applicant to Brookside Dairy Tanzania Ltd as alleged.
27. It is the Respondent's case that the allegation of employment is defeated by the fact that the Applicant has identified himself as a Tanzanian citizen and has not produced any work permit or appointment letter to demonstrate employment in Kenya.
28. The Respondent asserts that the foreign judgment itself confirms that the Applicant was employed by Brookside Dairy Tanzania Ltd and that at all material times the Applicant's employer was the said Tanzanian entity.
29. It is the Respondent's case that the judgment sought to be enforced was issued against Brookside Dairy Tanzania Ltd and no explanation has been given as to why it was not joined in those proceedings if at all it was the alleged primary employer.
30. The Respondent avers that the allegation that it is a holding company of Brookside Dairy Tanzania (T) Ltd is contradicted by the company search for Brookside Dairy (T) Ltd shows the shareholders of the said Company are Brookside Holdings Limited (Dubai) and Brookside Africa Limited.
31. It is the Respondent's case that the alleged similarity in directorship and company secretaries between the two entities is a non-issue as it is trite that a company is a separate legal entity from its members.



32. The Respondent contends that enforcement of a foreign judgment against it is barred under Section 4(4) of the *Foreign Judgments (Reciprocal Enforcement) Act*, Cap 43 Laws of Kenya.
33. The Respondent further asserts that the foreign judgment issued by the Tanzanian Court against the Brookside Dairy Tanzania Ltd is directly affected by the Insolvency/liquidation proceedings against the said Company.
34. It is therefore the Respondent's case that the application is misconceived and ought to be dismissed with costs.

Applicant/Judgment Creditor's Submissions

35. The Applicant submitted on five issues: Whether the Applicant was a primary employee of the Respondent and later seconded to Brookside Dairy Tanzania Limited; Whether the primary employer remains the legal employer of the seconded employee with a legal mandate to terminate the primary employment; Whether the Respondent was aware of the proceedings in Labour Revision 645 of 2019 from the High Court of Tanzania; Whether this court should adopt the Judgement and decree in Labour Revision 645 of 2019 from the High Court of Tanzania Labour Division at Dar es Salaam; Whether this court should award costs to the Respondent.
36. On the first issue, the Applicant submitted that he was initially employed by the Respondent as a sales person in Kenya and was later seconded as a Sales Supervisor to Brookside Dairy Tanzania Limited on a temporary assignment, with the Respondent remaining his primary employer and the Tanzanian entity serving as the host employer.
37. He submitted that the secondment was evidenced through email correspondence of 17th December 2012 wherein he requested the Respondent for financial support for his secondment transition; and upon secondment, he continued to receive work instructions from the Respondent and regularly shared work documents such as audits reports and work progress; and he regularly travelled back to Kenya to report on his duties. This confirms that the Respondent was his primary employer while Brookside Dairy Tanzania Limited is a host employer.
38. On the second issue, the Applicant submitted that in that instant application, secondment arose Brookside Dairy Limited Tanzania until completion of the temporary assignment period. Therefore, he argued that the contract of employment between the original employer and employee is not terminated by reason of the temporary assignment of the employee to the new employer as held in *David Barasa v British Peace Support Team & Another* [2016] eKLR. Therefore, the principal employer being the Respondent, who seconded the applicant remains the employer at all material times and not the agency to which the employee is seconded.
39. He further submitted that secondment creates a tripartite relationship between the original employer, the employee and the subsequent employer. Reliance was placed on *SMW v DHL Kenya* [2023] KEELRC 1468 (KLR): "From the exposition of the general principles on secondment of employees in the initial parts of this decision, it is clear to me that once the Claimant reported to work at DHL Swaziland, a tripartite relation between DHL Kenya, DHL Swaziland and the Claimant fell in place. In this context, whilst DHL Swaziland took up the position of the economic or host employer of the Claimant, DHL Kenya remained the Claimant's legal and or primary employer."
40. The Applicant argued that the Respondent retained control over his employment including hiring, disciplinary and termination since the Kenyan holding company would directly hire employees on behalf of the Tanzanian subsidiary and directly supervise the said employees. Consequently, the Respondent cannot use secondment as a 'mask' to evade their obligations as employers under the law,



as it actively participated in the hiring and terminating of the Applicant's employment. Therefore, the Respondent cannot pretend of not being aware of the proceedings brought against it by the Applicant.

41. On the third issue, the Applicant submitted that there exists a direct link between the Respondent and Brookside Dairy Tanzania Limited as demonstrated by composition of the board of directors; Specifically, the two companies share similar directors and company secretary being John Stuart Armitage and Jacob Ogechi Ombongi all of Kenyan nationality as per the company registration certificates. Therefore, the Respondent cannot purport to be unaware of Labour Revision 645 of 2019 from the High Court of Tanzania yet the companies have a similar company secretary.
42. It is the Applicant's submission that the duties of a company secretary involve acting as a legal custodian of a company's legal obligations by ensuring compliance with statutory requirements including company litigation matters as seen under Section 243 of the *Companies Act*, 2015. Thus, the Respondent were fully aware of the Applicant's case being their employee on secondment.
43. On fourth issue, it was submitted that Section 3(1)(a)(f) of *Foreign Judgments (Reciprocal Enforcement) Act* applies to a judgment or an award in arbitration proceedings of a designated court in civil proceedings whereby a sum of money is made payable. Whereas, Section 4(1)(f) as read with Section 5(1)(2) and (4) of *Foreign Judgments (Reciprocal Enforcement) Act* empower this court to register this judgement. Therefore, the judgement in Labour Revision 645 of 2019 should be registered
44. He further submitted that the High Court of Tanzania qualifies as a designated court under Section 2 of the *Foreign Judgments (Reciprocal Enforcement) Act* since Tanzania is a Commonwealth country.
45. On costs, the Applicant submitted that costs follow the event pursuant to Section 27(1) of the *Civil Procedure Act* and relied on *Walala v Guardian Coach Limited; Directorate of Occupational Safety and Health Services (Respondent)* [2025] KEELRC 792 (KLR), where costs were awarded to the successful party.

Respondent/Judgment Debtor's Submissions

46. The Respondent submitted on six issues: Whether the Kenyan Company is a party in the instant dispute; Who is the judgment debtor; Was Brookside Dairy Limited served with the proceedings in Tanzania; Did Brookside Dairy Limited submit to the jurisdiction of the Tanzanian Courts; Are there existing winding up proceedings affecting the judgment debtor; Did Brookside Dairy Limited have a branch in Tanzania?
47. On whether the Kenyan company is a party, the Respondent submitted that the application clearly identifies Brookside Dairy Tanzania Limited as the Respondent and that the Applicant has deliberately created confusion by seeking orders against Brookside Dairy Limited, which was not a party to the proceedings either in the instant suit or before the Tanzanian court.
48. On who the judgment debtor is, it was submitted that the pleadings and the judgment sought to be enforced expressly identify Brookside Dairy (T) Limited as the Judgment Debtor. The Respondent relied on Section 2 of the *Foreign Judgments (Reciprocal Enforcement) Act* which defines a Judgment Debtor as the person against whom judgment was given, and submitted that for all intents and purposes the Judgment Debtor remains Brookside Dairy (T) Limited against whom execution can issue.
49. On whether it was served with the proceedings in Tanzania, the Respondent submitted that it was neither sued nor joined in the proceedings, was never served with any process, it did not participate in the proceedings and did not submit to the jurisdiction of the Tanzanian courts.



50. On the winding up proceedings, the Respondent submitted that a winding up order has been issued against Brookside Dairy (T) Limited and a liquidator appointed, and therefore any claims including judgment debts ought to be presented before the liquidator for settlement. It was submitted that the judgment sought to be enforced is not capable of enforcement in the Kenya Court as it is subject to insolvency and winding up laws applicable in Tanzania.
51. On whether the Kenyan company had a branch in Tanzania, the Respondent submitted that a company search produced by the Applicant shows that the shareholders of Brookside Dairy (T) Limited are Brookside Holdings Limited and Brookside Africa Limited. The Kenyan company does not appear in the said records, hence it does not have a branch in Tanzania.
52. The Respondent further submitted that Brookside Dairy Limited and Brookside Dairy (T) Limited are distinct legal entities and that the existence of a common director or company secretary is non-issue. It submitted that it is trite law that a company is in law a separate legal personality from its members as established in *Salomon v. Salomon & Co Ltd* [1897] AC 22. Reliance was placed on *Victor Mabachi & another v Nurtun Bates Limited* [2013] eKLR “[A company] as a body corporate, is a persona juridica, with a separate independent identity in law, distinct from its shareholders, director and agents unless there are factors warranting a lifting of the veil.”
53. It is the Respondent’s submission that a foreign judgment against Brookside Dairy (T) Limited can only be enforced against Brookside Dairy (T) Limited; the issue of common directors is not a ground to call upon it to shoulder the obligations of the Tanzanian Company.
54. The Respondent relied on *Jayesh Hasmukh Shah v Navin Haria & another* [2016] eKLR wherein it was held that: “ The foreign court must have had jurisdiction, (according to the Kenyan rules on conflict of laws) to determine the subject matter of the dispute and the parties to the foreign court’s judgment and the enforcement proceedings must be the same or must derive their title from the original parties.” It argued that the party to the foreign judgment, (Brookside Dairy (T) Limited), to the foreign court’s judgment and the party in the enforcement proceedings, the Kenyan Company, are not the same.
55. I have considered all the averments and submissions of the parties in this application. The applicant seems to contend that his primary employer was the respondent and he was seconded to Brookside Dairy Tanzania Ltd. The applicant contends that the respondent is the holding company of the Tanzanian employer.
56. The applicant has however failed to exhibit any documents to show that he was seconded to the Tanzanian company by the respondent herein. He has also failed to show any correlation between the directors of the two companies. A company is indeed a separate entity from its directors and the issue of the obligation of one company to another must specifically and clearly be demonstrated in order for this court to accept the applicants contention. It is therefore apparent without any evidence to the contrary that the respondent herein and the Brookside Dairy (T) Ltd were separate entities and the respondent cannot be held liable for acts or omissions of the Tanzanian Company.
57. That notwithstanding, the respondent herein was never a party to the original judgment from Tanzania where they would have had a chance to defend themselves. It is therefore against the provisions of section 4 of the Kenya Foreign Judgments (Reciprocal Enforcement Act) for the respondents to be brought into these proceedings having not been parties in the original judgment from Tanzania.
58. For the reason given, I find the application before me unmerited and it is therefore dismissed accordingly. There shall be no order of costs.



DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF MAY, 2026.

HELLEN WASILWA

JUDGE

