



**IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: TUNOI, LAKHA & KEIWUA, J.J.A.)
CIVIL APPEAL NO. 80 OF 2000**

BETWEEN

NARENDRA KUMAR JASHBAI PATEL APPELLANT

AND

BANK OF BARODA RESPONDENT

**(Appeal from an Order of the High Court of Kenya at Nairobi
(Commissioner of Assize Gacheche) dated the 4th day of
November, 1999**

in

H.C.C.C. NO. 234 OF 1997

RULING OF LAKHA, J.A.

The appellant was the judgment debtor in a judgment against him in the High Court of **Justice, Queen's Bench Decision, United Kingdom**. The respondent obtained judgment against him on 7 January 1997 for sterling pounds 3,536,488.55 together with a sum of sterling pounds 607,633.87 being interest thereon and costs. The bank sought to enforce the judgment in Kenya, under **The Foreign Judgments (Reciprocal Enforcement) Act (CAP 43) (the Act)** and obtained registration of a foreign judgment in the superior court on 19 November, 1997.

The appellant brought an application to the superior Court to set aside the judgment. The application was heard by the superior court (Miss Jean Gacheche, a Commissioner of Assize) who by her ruling dated and delivered at Nairobi on 4 November, 1999 dismissed the said application with costs. It is against that decision that the judgment debtor now appeals to this Court.

That being so, the first question to be decided is whether there is a right of appeal to this Court from such a decision. In **HARNAM SINGH BHOGAL VS. JADVA KARSAN 20 EACA 17 at Pg. 18**, the Court of Appeal for Eastern Africa stated: "It is well settled law that a right to appeal can only be founded on a statute and any party who seeks to avail himself of the right must strictly comply with the conditions prescribed by the statute."

I have not been referred to nor am I aware of any reported case in which the Court has been asked to entertain an appeal without showing that a right of appeal exists by virtue of any statute or provision. I have carefully considered the provisions of the Act and, in particular Section 10 thereof and have not found any statutory provisions giving a right of appeal to this Court from a decision of the superior court refusing an application to set aside the judgment. Nor is there any special provision in any other statute

giving such a right of appeal.

It is said that there is a statutory provision under rule 7 of the **Foreign Judgments (Reciprocal Enforcement) Rules** which reads as follows:-

"7. An appeal shall lie as of right from an order registering or refusing to register judgment."

With regard to this, there are two observations that must be made. First, the right of appeal conferred by rule 7 is from an order registering or refusing to register judgment. That is not the same as an order refusing to set aside the judgment. If the right of appeal is granted and is limited in any way as it has been done in rule 7, the conditions prescribed must be strictly complied with. For that reason alone, rule 7 cannot avail the appellant in the present appeal. Secondly, and perhaps more importantly, **rule 7** was made under section 15 of the Act which empowered the Chief Justice to make rules of Court prescribing any matters necessary or expedient for the purposes of the Act and sets out the rules of Court may -

(a) make provision empowering the High Court to require any person applying for registration of a judgment to give security for costs;

(b) regulate the manner in which a judgment debtor is to be served with a notice of the registration of a judgment;

(c) prescribe the manner in which any questions arising under this Act are to be determined;

(d) prescribe any matter which under this Act is to be prescribed; and

(e) prescribe any fee for the purposes of this Act."

Nothing therein, however, empowers or authorises the provision to create a right of appeal. If this was an attempt to give by implication a right of appeal, I consider that it is ultravires the rule making a power. In such a case, it is void.

Quite apart from the above, a right of appeal must be express. I am unable to construe rule 7 as giving by a side wind the power to confer upon this Court a general or an unlimited jurisdiction on appeals from decisions of a superior court in all cases under the Act although not expressly covered by the words described by **rule 7**.

If an appeal could lie at all, it lay under section 75 of the Civil Procedure Act, the relevant part of which reads as follows:

"75. (1) An appeal shall lie as of right from the following orders, and shall also lie from any other order with the leave of the court making such order or of the court to which an appeal would lie if leave were granted -"

If an appeal would lie at all, leave is required. It is not in dispute that leave was never asked for or given. This seems to me to conclude the matter.

I would therefore dismiss the appeal with costs.

Dated and delivered at Nairobi this 13th day of July, 2001.

A.A. LAKHA

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JUDGE OF APPEAL