



**SWC v PNC (Civil Case E016 of 2024)
[2025] KEHC 9974 (KLR) (Family) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9974 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

FAMILY

CIVIL CASE E016 OF 2024

SN RIECHI, J

JUNE 26, 2025

**IN THE MATTER OF ESTATE OF FOREIGN
JUDGEMENTS (RECIPROCAL ENFORCEMENT)**

BETWEEN

SWC APPLICANT

AND

PNC RESPONDENT

RULING

1. This ruling is in respect of Preliminary Objection dated 15th October 2024 and a an originating summons dated 30th August 2024.
2. This matter related to the applicant and respondent who got married on 31.3.1973 in Kenya and lived together as husband and wife in Kenya. During the subsistence of their marriage the parties herein acquired various properties. Subsequently in 2001 the parties moved to United Kingdom. While in UK due to irreconcilable reason the respondent filed a divorce petition on 30.1.2024 and their marriage was dissolved in 2015. Consequently, the respondent filed a matrimonial cause No.DD14D00843 before the family court in Birmingham. On 29.11.2023 Justice K. Thomas delivered a judgement. On 7.2.2024 the judgement was certified by Justice Thomas of Walsall County. On 26.7.2024 the judgment was authenticated at the Kenya High Commission at London. Subsequently the applicant filed an originating summons dated 30th August 2024 before this court seeking orders;
 1. This Court hereby recognizes and adopts the judgement of Walsall County Court dated 29.11.2023 issued in the United Kingdom by Justice K. Thomas, District Judge in case number DD14D00843 as a judgement of this Honourable Court.



2. That the court do grant further orders as it may deem necessary.
3. That costs of the application be in the cause.
3. The application is premised on the grounds that;
 - i. On 29/12/2023 Justice K Thomas sitting in Walsall County Court, United Kingdom delivered judgment in case number DDI4D00843 between Peter Ngugi Chege and Susan Wanjiru Chege.
 - ii. The judgment was made by a designated court in the United Kingdom.
 - iii. United Kingdom is a reciprocating country for the purposes of *Foreign Judgments (Reciprocal Enforcement) Act* Cap 43 Laws of Kenya.
 - iv. The judgment is a final judgment between the parties
 - v. The judgment affects several properties within the Republic of Kenya.
 - vi. The judgment has not been satisfied with respect to the properties in the Republic of Kenya
 - vii. It is in the interest of justice that the Application is allowed
4. The application is further supported by an affidavit sworn by the applicant on even date in which the applicant briefly stated she was born and brought up in Kenya before migrating to the United Kingdom. The applicant stated that on 31/3/1973 she got married to the respondent herein and they were blessed with four children namely; CCN, DMC, JKC and BGNN. The applicant deponed they lived together as husband and wife in Kenya where they acquired various properties including Loc.2/ Kanderendu/XXX, Ngong/Ngong/XXXX, Nairobi/Block75/XXX Buruburu, Nairobi Block 97/XXXX A && B Fedha estate, Block XX/7X9 Komarock, Plot No. II Kanderendu and Loc.4/Kaguthi/XXX.
5. The applicant averred that in the year 2001, she travelled to the UK to study and upon completion of my studies she was employed and her husband and joined the respondent in the UK in the same year 2001. The applicant averred further that on 20/3/2001 and together with her husband, the parties jointly bought a family home being 77 Cartsbrooke oud, Wednesbury, W10Xand registered at HM and registry with title number WMI84XXXX (the UK property).
6. It is the applicant's case that in the year 2005, her husband deserted their matrimonial home and on 30/1/2014, the respondent filed for divorce proceedings which were concluded in the year 2015 and their marriage was dissolved. The applicant stated the respondent further filed a case in the family Court at Birmingham being case No. DDI4D00843 under the matrimonial causes Act 1973 UK (the matrimonial cause). The applicant averred that upon the filing of the matrimonial cause, the family agreed on the mode of distribution of the matrimonial property. With the help of family members the parties herein agreed on a consent to be filed in court.
7. It is the applicant's case that on 29/1/2023 Justice K Thomas sitting in Walsall County Court, family court at Burmingham, United Kingdom delivered judgment in the matrimonial as per attached copy of the judgment marked 'SWC'. The applicant deponed that the judgment was by consent of the parties where by all the matrimonial properties between them would be shared out as shown in the judgment.
8. The applicant deponed that except for the sale of the UK property, the rest of the judgment has not been satisfied with respect to the properties in Kenya as per the judgment. The applicant stated that from the judgment, she is entitled to a share of the Kenyan properties in the proportions shown in the



- judgment. The applicant stated that on 7/2/2024, the Judgment was certified by Justice Thomas of Walsall County Court and on 24/7/2024 applicant was issued with an Apostille by the office of the Foreign Commonwealth and Development Affairs at London in the UK to authenticate the judgment.
9. The applicant deponed that on 26/7/2024, the judgment was authenticated and/or legalized at the Kenya High Commission at London by Mr. Kennedy Mbara, Kenyan first counsellor.
 10. The respondent opposed the application and he filed a Notice of Preliminary Objection dated 15th October 2024 on the grounds that the applicant's application offends the provisions of section 3(3) (d) of the Foreign Judgements(Reciprocal Enforcement) Act,Cap 43 Laws of Kenya that excludes the applicability of the Foreign Judgement (Reciprocal Enforcement) Act,CAP 43 Laws of Kenya, on which the instant application is anchored, on matrimonial causes.
 11. The respondent also filed a Replying affidavit sworn on 4th November 2024 in response to the originating summons. The respondent briefly deponed that the consent was procured by coercion and duress characterized by exploitation of his vulnerability and vulnerable position at the time to force the respondent into signing for 50-50 sharing of the properties. The respondent deponed that the judgement is not a conclusive judgement within the confines of section 9 of *Civil Procedure Act*
 12. By consent of parties the notice of preliminary objection and the application dated 30th August 2024 were heard together and canvassed by way of written submission. The respondent in support of his Preliminary Objection filed written submissions in respect of the preliminary objection dated 4th November 2024 through the firm of F.M.Muteti & Company Advocates. The respondent briefly stated that under section 3(3)(d) of the Foreign Judgements(Reciprocal Enforcement) Act,certain types of judgements are excluded from the Act's Application. The respondent submitted that judgements which deal with matrimonial causes are expressly excluded from recognition and enforcement under the Act.
 13. That the subject judgement being a judgement determining rights in property arising out of a matrimonial relationship is excluded from recognition under provisions of the Foreign Judgements (Reciprocal Enforcement) Act.
 14. The respondent also filed written submissions opposing the originating summons dated 30th August 2024 in which he reiterated the averment in his replying affidavit. The respondent briefly submitted that he was coerced into signing the consent by acceding to a 50-50 sharing of the matrimonial property and hence resultant foreign judgement is not conclusive.
 15. The applicant filed written submissions dated 15th November 2024 through the firm of Kibanya & Kamau Associates opposing the notice of preliminary objection. The applicant briefly submitted that the preliminary objection raised by the respondent is not purely a point of law. The applicant submitted the respondent has filed a replying affidavit dated 4th November 2024 which raises factual issues and this shows that there are serious facts that need to be interrogated to establish the nature of the matter before the court. The applicant urged this court to dismiss the Preliminary Objection.
 16. The applicant also filed submission in support of her originating summons in which she briefly submitted that the respondent has failed to show how the judgment falls within the exceptions set out under section 9 of the *Civil Procedure Act*; that the respondent has not challenged the validity of the judgement either in UK or Kenya. The applicant submitted that despite alleging the consent judgement was procured by coercion, he has not moved to set it aside in UK where it was delivered.
 17. The applicant submitted that merits of the judgement cannot be questioned in Kenya. The applicant submitted that respondent cannot seek to set aside the consent judgement in Kenya. The applicant



- relied on the decision in case of Dari Limited & 5 others V East African *Development Bank (Court of Appeal 70 of 2020)*[2023]KECA 454 (KLR)(20 April 2023)(Judgement). The applicant submitted the respondent cannot relitigate the judgement as it is final.
18. The applicant submitted that the judgement is recognizable and enforceable and that the Originating Summons is seeking recognition and enforcement as opposed to registration. The applicant submitted that the respondent has raised the issue of section 3(3) of the reciprocal Act as a bar to recognition of foreign judgements in matrimonial causes. The applicant submitted this is a wrong interpretation of the law. She submitted further that Reciprocal Act only regulates registration of foreign judgements and its effect is that foreign judgements on matrimonial cases are not registrable. The applicant referred to the decision in *M N M v PMN* [2016]Eklr.
 19. From the applications, revival affidavits and submission this court frame the following as the main issues for determination;
 - i. Whether the Preliminary Objection raised is proper and well founded in law.
 - ii. Whether this court should recognize and adopt the foreign judgment dated 29.11.2023
 20. On the 1st issue a Preliminary Objection is usually a weighty or serious matter to be raised at any stage of proceedings. A preliminary objection is defined by Black's Law Dictionary 10th Edition as:-

“an objection that, if upheld would render further proceedings before the tribunal impossible or unnecessary. An objection to the court's jurisdiction is an example of a preliminary objection.”
 21. Before I consider the nature of the objections raised, it is important to note that a preliminary objection must consist of purely a point of law pleaded which if well-founded will dispose of the entire suit. In the cited case of *Mukisa Biscuit Manufacturing co. Ltd –vs-West End Distributors Ltd (1969)* EA the court held as follows:-

“So far as I am aware, a Preliminary Objection consists of a pure point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection on the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute on arbitration.”
 22. In this matter, the Respondent has pleaded that the applicant's application offends the provisions of section 3(3)(d) of the Foreign Judgements(Reciprocal Enforcement) Act,Cap 43 Laws of Kenya that excludes the applicability of the Foreign Judgement (Reciprocal Enforcement) Act,CAP 43 Laws of Kenya, on which the instant application is anchored, on matrimonial causes. The respondent contention is that this court lack jurisdiction to recognize the judgement.
 23. I have analyzed the application and the orders sought in the said originating summons and I note that applicant is seeking recognition and enforcement of foreign judgement delivered on 29/12023 by Justice K Thomas sitting in Walsall County Court, United Kingdom delivered judgment in case number DDI4D00843 between Peter Ngugi Chege and Susan Wanjiru Chege.The application is filed pursuant to section 3,4,5 and 6 of Foreign Judgement (Reciprocal Enforcement) Act CAP 43 Laws of Kenya and section 9 of the *Civil Procedure Act*.
 24. The matrimonial cause filed by the applicant is for division of matrimonial properties which were allegedly acquired during the subsistence of their marriage. The High Court is vested with jurisdiction to hear and determine matters in regard to division of matrimonial properties. From the foregone, I



find that the respondent's Notice of Preliminary Objection dated 15th October 2024 is devoid of merit. The same is dismissed.

25. On whether this court should recognize and adopt the judgment delivered on 29/12/2023 by Justice K Thomas sitting in Walsall County Court, United Kingdom delivered judgment in case number DDI4D00843 between Peter Ngugi Chege and Susan Wanjiru Chege.
26. The applicant submitted that the judgement was made by designated court in Uk and it being a reciprocating country for purpose of Foreign Judgements (Reciprocal Enforcement) Act the judgement should be recognized and adopted by this court.
27. The respondent on his part submitted that the judgment should not be recognized for reasons that the consent judgment was obtained by coercion and duress on him.
28. Section 3(3)(d) of the Foreign Judgements(Reciprocal Enforcement) Act,Cap 43 Laws of Kenya provides;
 - (3) This Act does not apply to a judgment or order-“(d) in a matrimonial cause or matter, or determining rights in property arising out of a matrimonial relationship, not being a judgment referred to in paragraph (a) or (b) of subsection (1), whereby a sum of money is payable or item of movable property deliverable;”
29. Section 67 of the *Marriage Act* permits recognition of foreign marriages. The said section provides as follows:-“Where a foreign court has granted a decree in matrimonial proceedings whether arising out of a marriage celebrated in Kenya or elsewhere, that decree shall be recognized in Kenya if:-
 - (a) Either party is domiciled in the country where that court has jurisdiction or had been ordinarily a resident in Kenya for at least two years immediately preceding the institution of the proceedings
 - (b) Being a divorce or annulment, divorce or separation, it is effective in the country of domicile of the parties or either of them.”
30. The above provision provides the conditions which are required to be met are that either party was domiciled in the country where the decree or order was made and the foreign court had jurisdiction.
31. It is therefore clear that under the *Marriage Act* 2014, foreign judgments annulling marriages or generally dealing with matrimonial proceedings are recognized in Kenya and the prayers herein are properly sought and therefore allowed in terms of prayer No. 2 to the effect that:
 - a. This honourable court do recognize and adopt the judgement of Walsall County dated 29.11.2023 issued in the United Kingdom by Justice K.Thomas,District Judge in case Number DD14D00843 as a judgement of this Honourable court.

DATED AT NAIROBI THIS 26TH DAY OF JUNE 2025.

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S. N. RIECHI

JUDGE

