



**Bhawandas (Acting in his personal capacity, manager and legal representative of Neelkamal International Traders) v Lakhiani & 3 others (Sues as the Legal Representatives of the Estate of Suresh Rewachand Lakhiani); Global Apparels Kenya (EPZ) Ltd & another (Interested Parties) (Civil Suit E012 of 2022) [2025] KEHC 12297 (KLR) (7 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 12297 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CIVIL SUIT E012 OF 2022  
F WANGARI, J  
AUGUST 7, 2025**

**BETWEEN**

**AWTANI ASHOK BHAWANDAS (ACTING IN HIS PERSONAL CAPACITY, MANAGER AND LEGAL REPRESENTATIVE OF NEELKAMAL INTERNATIONAL TRADERS) ..... PLAINTIFF**

**AND**

**HARISH SURESH LAKHIANI ..... 1<sup>ST</sup> DEFENDANT**

**MAYA SURESH LAKHIANI ..... 2<sup>ND</sup> DEFENDANT**

**HITESH SURESH LAKHIANI ..... 3<sup>RD</sup> DEFENDANT**

**MAMTA SURESH LAKHIANI ..... 4<sup>TH</sup> DEFENDANT**

**SUES AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF SURESH  
REWACHAND LAKHIANI**

**AND**

**GLOBAL APPARELS KENYA (EPZ) LTD ..... INTERESTED PARTY**

**MH ENTERPRISES LLC ..... INTERESTED PARTY**

**JUDGMENT**

1. The Plaintiff instituted the suit herein through the Complaint dated 07/03/2022. It is averred that by a written Loan Agreement executed in Dubai, United Arab Emirates on 06/10/2015 by Mr. Suresh Rewachand Lakhiani (Deceased) on the one part, and the Plaintiff on the other part. The deceased borrowed the sum of AED (Emirati Dirhams) three million (equivalent to USD 825,000.00) repayable



- on mutually agreed terms of the agreement and of two subsequent amended agreements similarly executed on 02/11/2016 and 09/03/2017.
2. The Plaintiff averred that to secure the loan, the deceased issued and/or authorized one Gem Trading LLC to issue the Plaintiff with post-dated cheques drawn in the name of Neelkamal International Traders for the equivalent loan sum payable between May 2017 and August 2018. That all the cheques bounced upon being presented for payment. That the deceased breached terms of the agreement by failing to settle the debt or any part thereof.
  3. The Plaintiff stated that upon the demise of Mr. Suresh Rewachand Lakhiani (deceased), the Plaintiff filed Dubai Courts Suit No. 2092/2018 Commercial/Plenary at Dubai in the United Arab Emirates against the Defendants in their capacity as the Legal Representatives of the estate of the deceased. By a Judgment delivered on 29/12/2020, the Defendants were ordered to pay the Plaintiff the loan amount. That an appeal against the Judgment were lodged by the Defendants, which appeal was dismissed with costs. The Defendants and the Legal Representatives of the estate of the deceased have failed, refused and/or neglected to settle the judgment debt to date and the same continues to accrue interest.
  4. The Plaintiff averred that the judgment is not inconsistent with the Kenyan domestic laws, therefore not contrary to Kenyan public policy. The Plaintiff sought to execute against the Interested Party where the estate of the deceased is a registered shareholder of 250,000 ordinary shares and 750,000 preference shares. He prayed that the foreign judgment be executed by this court by way of attachment and sale of the said shares and/or any other properties of the estate of the deceased found within the jurisdiction of this court.
  5. The Plaintiff disclosed that orders made by the court in Dubai, where some bank accounts belonging to the Defendants were garnisheed and sums of AED 12,362.53 and AED 2,318.53 were received and deposited in the court in Dubai. That the said sums have however not been released to the Plaintiff.
  6. The Plaintiff stated that this court has jurisdiction to enforce foreign judgments as claims under the common laws of England in instances where the foreign state is not mentioned in the schedule to the Foreign Judgment (Reciprocal Enforcement) Act.
  7. The Plaintiff prayed for judgment against the Defendants for;
    - a. A declaration that the foreign judgment delivered in Dubai Courts Suit No. 2092/2018 Commercial/Plenary is enforceable by this court, that the sum of AED (Emirati Dirhams) Three Million (equivalent to USD 825,000.00) in conformity with the foreign judgment delivered in Dubai Courts Suit No. 2029/2018 Commercial/Plenary.
    - b. That there be execution of the Dubai Courts judgment by way of attachment and auction of the 250,000 ordinary shares and 750,000 preference shares in Global Apparels Kenya (EPZ) Limited held in the name of the estate of the deceased to the Plaintiff.
    - c. Costs of this suit, interest at commercial rates, and any other further relief that this court may deem just and expedient.
  8. The Defendants entered appearance and filed their Statement of Defence dated 01/11/2023 save for what was expressly admitted, they denied each and every allegation contained in the Plaintiff. The Defendants stated that the judgment which the Plaintiff seeks to execute has failed to recognize the Kenyan law with respect to running of companies. That Gem Trading LLC which was not a party to these proceedings would only transact under the relevant legal provisions.



9. That the impugned agreement provided that the loan advanced by Mr. Ashok Awtani was to be guaranteed by the deceased's shares in various restaurants set out in the agreement dated 06/10/2015 and thus the Plaintiff had no claim against the personal representatives of the deceased.
10. The Defendants further stated that the agreement entered into between the deceased and the Plaintiff herein provided for a dispute resolution mechanism which included mediation and arbitration and thus any judgment resulting from any other forum other than an arbitrator was a nullity and could not be considered to have been rendered by a court of competent jurisdiction.
11. That if any money was legally garnisheed and delivered in Dubai courts, then it was the Plaintiff's responsibility to follow up and have it released to him. That the Plaintiff tried to obtain money illegally from beneficiaries of the estate of Suresh Rewachand Lakhiani, which amounts were ordered to be returned to their bank accounts. The Defendants prayed that the Plaintiff's suit against them be dismissed with costs.
12. The case proceeded to hearing. The Plaintiff, Ashok Bhawandas Awtani, testified as PW1 and stated that he is a resident in UAE, Dubai where the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants as well. PW1 confirmed that he filed a Witness Statement as well as documents as listed in the List of Documents both dated 07/03/2022. PW1 adopted the Witness Statement as evidence of the court and produced the documents as Exhibits 1-6, 8 and 9.
13. On cross examination by Mr. Wachira, counsel for the Defendants, PW1 stated that he was before court to enforce the judgment issued in Dubai in respect to a personal loan. That however, Global Apparels was not a party to the agreement dated 06/10/2015 and in the amended agreements. He admitted that the deceased gave his 3 hotels as part of the security and in case of default the Plaintiff was to acquire 50% shares in the 3 hotels. That Mr. Suresh died before payment due date.
14. PW1 on further cross examination stated that the personal loan agreement under article 11 refers to dispute resolutions where they were required to take 15 days to mediate in case of a dispute. That they asked for an arbitration but the Defendants did not cooperate. He said he has to see the financial account of the business before considering getting the 50% shares. That PW1 would take all the available options to recover his money and that security of the restaurants is the last option.
15. The defence tendered their evidence in court where Harish Lakhiani testified as DW1. His Witness Statement dated 12/11/2024 was adopted as his evidence in chief. He also produced documents as per the List of Documents dated 01/11/2023 as Exhibits 1-8.
16. He stated that according to the Personal Loan Agreement dated 06/10/2015 between his father and the Plaintiff, 2 of the 3 restaurants given as security, are still operational but the Masala Craft was closed as it was making losses. DW1 said that there was no execution done in Dubai and that profits of the shares of what was inherited can be used in repaying the loans.
17. On cross examination by Mr. Gikandi, counsel for the Plaintiff, DW1 stated that his advocate wrote a letter dated 08/02/2024 offering an amount for settlement but there was no settlement reached. He said that they are not allowed to sell their shares in the hotel to settle the judgment and that it was the responsibility of the Plaintiff to execute the debt.
18. Both parties filed their rival submissions. The Plaintiff in their submissions dated 20/03/2025 argued that the law with regard to enforcement of judgments made by courts of foreign jurisdictions is well settled. That *Foreign Judgments (Reciprocal Enforcement) Act*, Cap 43 Laws of Kenya applies with regard to enforcement of foreign judgments issued by the countries that share reciprocity of judgments with the Kenyan courts. The Plaintiff submitted that they conceded that there was no reciprocity



- of jurisdiction between Kenya and Dubai. That even though the *Foreign Judgments (Reciprocal Enforcement) Act* does not apply, the English Common Law which is applicable in Kenya as provided under Section 3 (3) of the *Judicature Act* grants a holder of such a judgment the right to file a suit for the purpose of enforcing such a judgment.
19. The Plaintiff relied on the case of *Jayesh Hasmukh Shah v Navin Haria & Another* (2016) eKLR and provisions of Section 9 of the *Civil Procedure Act* on the parameters of enforcement of a foreign judgment in Kenya from a non-designated country. The Plaintiff also cited holdings in the cases of *Atlantic Pictures Limited v Insight Kenya Limited* (2019) eKLR and *SFK v PLL* (2022) eKLR and submitted that they had complied with all the conditions required for one to be granted a decree to enforce a judgment issued by a foreign court.
  20. The Plaintiff submitted that during hearing of the suit, the Defendants made proposal for an out of court settlement. However, during cross examination of the Defendant's witness, no reasonable offer was made, hence the matter proceeded to full hearing.
  21. Regarding the 2<sup>nd</sup> Interested Party, the Plaintiff cited the case of *Billiah Matiangi v Kisii Bottlers Limited & Another* (2021) eKLR to the effect that the Plaintiff's case as against the 2<sup>nd</sup> Interested Party was uncontroverted and thus remained mere allegations. That the 2<sup>nd</sup> Interested Party have not filed pleadings praying for any remedy and as such, their involvement is irregular. The Plaintiff therefore prayed that judgment may be entered in their favour as prayed in the *Plaint*.
  22. The Defendants in their submissions dated 25/04/2025 stated that the foreign judgment which forms the subject of the present proceedings is not enforceable in Kenya as there exists no reciprocal enforcement arrangement between the Republic of Kenya and the United Arab Emirates.
  23. The UAE is therefore not recognized as a designated country under the *Foreign Judgments (Reciprocal Enforcement) Act*. The Defendants relied on the holdings in *Ian Mbugua Mimano v Charlotte Wamuyu Mutisya & 2 Others* (2014) eKLR, *Re CE & FJ (Applicants) (Miscellaneous) Cause E229 of 2023* [2023] KEHC 23953 (KLR) (23 October 2023) (Ruling), and *Jayesh Hasmukh Shah v Navin Haria & Another* (2016) eKLR.
  24. The Defendants submitted that in the absence of a reciprocal enforcement arrangement, a foreign judgment is enforceable in Kenya as a claim in common law. That however, in the unlikely event that this court considers the Plaintiff's recourse under common law, the same has to fail because the judgment does not meet the necessary threshold as envisioned under the various tenets of common law.
  25. That the same was demonstrated through failure to adhere to the doctrine of exhaustion in seeking to enforce the Dubai judgment, violation of the principle of privity of contract and failure to adhere to the arbitration clause at Article 11 of the Personal Loan Agreement.
  26. The Defendants further argued that being that the Plaintiff has partially executed the Dubai judgment against the Defendant by garnisheeing the accounts of Gem Trading LLC offered as part of the security for the loan, he bears a legal and equitable obligation to make full and frank disclosure to this court of the amounts recovered to date as against the outstanding balance allegedly due and owing from the estate of the deceased.
  27. That the Defendants submitted that the restaurants in Dubai remain operational and are of sufficient value to satisfy the outstanding loan. That accordingly, the Plaintiff is at liberty to proceed with attachment of 50% of shares in the restaurants which form part of the estate of the deceased, in accordance with terms of the Personal Loan Agreement.



28. The Defendants stated that it is uncontested that the Interested Party was not a signatory to the personal loan agreement executed in Dubai. That the Plaintiff has not demonstrated, either through pleadings or evidence, any legal basis by which the Interested Party could be bound or held liable for the obligations arising from a contract to which it was a stranger. That the mere association or relationship whether familial, corporate or otherwise with the actual borrower does not suffice to displace the requirement of privity.
29. On failure to adhere to the arbitration clause at Article 11 of the Personal Loan Agreement, the Defendants argued that it is a cardinal principle of contract law that courts do not have the power to rewrite contracts for parties. That the enforcement sought herein offends the express terms of the contract between the parties, particularly, clause 11 which provides that any dispute arising from the said contract shall be referred to arbitration.
30. That this therefore renders the Dubai judgment unenforceable in Kenya as it arises from proceedings that violated the agreed dispute resolution mechanism. Further reliance was placed on the Supreme Court case of Nyutu Agrovet Limited v Airtel Networks Kenya Ltd (2024) KECA 523 (KLR) and the Court of Appeal Case of UAP Provincial Insurance Co. Ltd v Michael John Beckett (2013) eKLR.

### **Analysis**

31. This court has considered pleadings, the evidence on record and submissions by the parties. The issues for determination are: -
  - a. Whether the Plaintiff met the threshold for enforcement in Kenya of the judgment delivered in Dubai Courts Suit No. 2029/2018 Commercial/Plenary
  - b. Who should bear costs and interests of the suit
32. It is not in dispute that the Dubai Court entered Judgment in favour of the Plaintiff against the estate of the deceased. It is also not in dispute that Kenya and the United Arab Emirates have got no reciprocal arrangements in enforcement of judgments. The UAE not being a designated country, The *Foreign Judgments (Reciprocal Enforcement) Act* (Cap 43 of the Laws of Kenya) is not applicable.
33. Nevertheless, the Court of Appeal in Jayesh Hasmukh Shah v Navin Haria & another [2016] eKLR, stated that:
 

“...In the absence of a reciprocal enforcement arrangement, a foreign judgment is enforceable in Kenya as a claim in common-law...”
34. I agree with the submissions by the Plaintiff that in the absence of a reciprocal enforcement arrangement, the foreign judgment is enforceable in Kenya as a claim in the common law. The issue now is whether the said judgment may be executed as prayed by the Plaintiff.
35. The Defendants state that the Judgment and the subsequent execution process offends Article 11 of the Loan Agreement which required the parties to resolve arising disputes by way of arbitration. The parties submitted themselves to the jurisdiction of the court in Dubai. The issue ought to have been raised then. The Defendants are seeking to have this court sit as an appellate court in determining whether the judgment was lawful or not. I find that the issue has already been overtaken by events as the matter is at the execution state, and partial execution has already been done in Dubai vide the disclosed garnishee proceedings.
36. The Plaintiff seeks to execute against the shares of the estate of the deceased in the Interested Party Company. The Defendants state that the Plaintiff is yet to exhaust the terms of the agreement as far



as execution is concerned. I have perused through the Loan Agreement dated 06/10/2025 and the amendments done on 02/11/2026 and 09/03/2017.

37. In the Preamble, Article 3, 6 and 7 of the agreement dated 06/10/2015 and further, Clause b, 2 of the amended agreement dated 09/03/2017, it is clear that both parties agreed to have the 50% shares in DaGama Restaurant LLC, Vineyard Restaurant LLC and Masala Craft Restaurant LLC which were the security to the loan advanced, would be acquired by the Plaintiff in the event of default.
38. I do concur with the submissions by the Defendant that the Plaintiff offends the doctrine of exhaustion. (See Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others (2015) eKLR)
39. The Plaintiff ought to have exhausted the available execution avenues as per their agreement before seeking to execute against the Interested Party. Parties are bound by the terms of their own contract. In National Bank of Kenya Limited v Pipe Plastic Samkolit (K) Ltd [2002] 2 EA 503 [2011] eKLR at 507, it was stated as follows;
- “ A court of law cannot rewrite a contract between parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded or proved.”
40. I find that the claim against the Interested Party was premature and the Plaintiff should abide by the terms of the Loan Agreement in issue.
41. On costs, the same follows the event. That is what Section 27 of the *Civil Procedure Act* decrees. However, this court has the discretion to direct otherwise. Considering that the Plaintiff is entitled to enjoy the fruits of its judgment but unsuccessful in the execution attempt, each party to bear its own costs.

#### **Determination**

42. Following the foregone discourse, the upshot is that the following orders do hereby issue: -
- a. That this suit having been filed prematurely, it is hereby dismissed
  - b. Each party to bear its own costs.

**DATED, SIGNED AND DELIVERED AT MOMBASA, THIS 7<sup>TH</sup> DAY OF AUGUST, 2025.**

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**HON. F. WANGARI**

**JUDGE**

In the presence of:

Mr. Gikandi Advocate for the Plaintiff

Mr. Kimani Advocate for the Defendants

Mr. Ondimu Advocate for the Interested Party

Ms. Norah, Court Assistant

