

UGANDA / JUDGMENT

Volcano Holdings Ltd v All Africa Logistics Solutions Ltd (Misc Cause No. 230 of 2021) [2022] UGHCCD 112 (27 July 2022)

[2022] UGHCCD 112

COURT

HC: Civil Division (Uganda)

BEFORE

Musa Ssekaana, J

CASE / FILE NUMBER

Misc Cause No. 230 of 2021

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(CIVIL DIVISION)****MISCELLANEOUS CAUSE NO. 230 OF 2021****VOLCANO HOLDINGS LIMITED:..... APPLICANT****VERSUS****ALL AFRICA LOGISTICS SOLUTIONS LTD :..... RESPONDENT****BEFORE: HON. JUSTICE SSEKAANA MUSA*****RULING***

This Application was brought under Section 1 and 3 of the Judgment Extension Act Cap 12, Section 98 of the Civil Procedure Act, Order 52 of the Civil Procedure Rules S171-1 seeking the following Orders;

- *1. That the Judgment and decree delivered by the Chief Magistrate court at Mombasa vide Civil Suit Number 23 of 2020 be registered and executed by this honorable court.*
- *2. Costs to the application be provided.*

This application is supported by an Affidavit of Claire Amany Rukundo which sets out the grounds in support of the application dated 6 th August 2021.

The brief background of the application is that the applicant and respondent entered into the transport agreement on the 15th day of September 2017 where the applicant performed their obligations under the contract and the respondent breached their payment obligations.

The applicant filed Civil Suit no 22 of 2020 at the Chief Magistrate court at Mombasa which had a competent jurisdiction. The judgment was granted in favour of the applicant and a decree was extracted for the sum owed; US\$80,800, interest and costs of the suit.

The decree has not been satisfied by the respondent since judgment was passed in Kenya and the Respondent is situate in Uganda with no assets in Kenya.

The respondent was served by Kalongo Patrick on several occasions and this court deemed the service to be effective after the respondent failed to file any affidavit in reply or even attend court for hearing.

ISSUES

- *1. Whether this judgment can be registered and enforced in Uganda?*
- *2. What the remedies available to the parties?*

The applicant was represented by Counsel Harold Turigye while the respondent was not represented.

Court directed the Parties to file written submissions and they have been considered by this court in coming up with its decision.

Whether this judgment can be registered and enforced in Uganda?

Counsel for the applicant submitted that Section 1 of the Judgment Execution Act Cap 12 provides that, "where a decree has been obtained or entered in the Supreme Court of Kenya or in the High court of Malawi or of Tanzania, or in any court subordinate to any of those courts, for any debt, damages, costs and where it is desired that the decree shall be executed upon the person or property in Uganda, the decree may be transferred to the High Court or to any of the courts subordinate to it...".

Counsel also defined a decree and an order as per Section 2 of the Civil Procedure Act Cap 71 as the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to any of the matters in controversy in the suit any may be either preliminary or final and an order as the formal expression of any decision of a civil court which is not a decree.

It was submitted by the applicant's counsel that according to paragraph 8 of the Affidavit in support, the applicant obtained a judgment from Mombasa, Kenya in their favor and proceeded to extract a decree from the court that passed the judgment and endorsed the said decree on 1st October 2020.

Counsel also relied on the case of **American Express International Banking v Atul [1994] EA 10**, where it was observed that the debtor could not just be left stranded without a remedy having obtained a judgment from a country with a well-established legal system and courts that are credible.

Basing on Section 3 of the Foreign Judgment (Reciprocal Enforcement) Act Cap 9 provides for the registration of foreign judgments. Counsel for the applicant cited the case of **Godfrey Githinji Kamiri T/A West Minister Commercial Traders and Another v Mathew Ouma Oseko Miscellaneous Cause No. 13 of 2012**

The applicant's counsel therefore prayed that the application be allowed based on Order 22 rule 4 of Civil Procedure Rules which provides for the procedure of enforcement of judgments outside jurisdiction. Following the facts at hand, counsel submitted that the judgment emanates from a competent court in Kenya with whom Uganda has a reciprocal arrangement with.

Analysis

As per the Applicant's exhibit marked "I" a decree was passed by the Chief Magistrate at Mombasa for the claim of US\$ 80,800 owed as of 21st May 2019, interest on the amount owed from 21st May 2019 until payment in full, costs of the suit as well as any other or further relief court may deem fit to grant. Judgment was therefore passed on the 31st August 2020 in favor of the Plaintiff against the Defendant where the Principal Amount was stated to be US\$ 80,800, Interest at 12% p.a from 21st May 2019 which amounts to US\$ 12,928 making the decretal amount US\$ 93,728.

The principle of sovereignty of the state's legal system entails that a judgment in one jurisdiction should not be automatically enforceable in another. The enforcement of foreign judgments is made pursuant to compliance with their respective requirements of registration in a reciprocating country. Therefore, a judgment may be registered under the applicable statute if the procedural requirements and the conditions ensuring its validity and integrity are satisfied.

Section 3(1) of the Foreign Judgments (Reciprocal enforcement) Act cap 9 states;

**"A person, being a judgment creditor under a judgment to which this Part of this Act applies, may apply to the High Court at any time within six years after the date of the judgment or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered; except that a* *judgment shall not be registered if at the date of the application— (a) it has been wholly satisfied; or (b) it could not be*

enforced by execution in the country of the original court".*

Rule 2 of the foreign judgment (Reciprocal Enforcement) (General Application) Order 35/2002 states that;

"Part ii of the Foreign judgments (Reciprocal Enforcement) Act shall apply to the territories of the commonwealth and to judgments obtained in the Courts of those territories as it applies to foreign Countries".*

It is therefore the position of the Law as per the cited provisions that a person with a foreign judgment from a Court of competent Jurisdiction and a member of the Commonwealth can apply to this Court to have their judgment registered and have the same effect as a judgment passed in Uganda. Registration is a matter of discretion. The court may order the judgment to be registered if it is just and convenient in all the circumstances of the case to do so.

Justice Mwangusya (as he then was) noted in the case of *Christopher Sales and Another v Attorney General HCCS NO. 9 of 2011* that the laws governing enforcement of foreign judgment based on two theories; *the theory of obligation and reciprocity* which are combined and the theory of comity where the theory of obligation considers that foreign judgments create debt and a liability to pay which reciprocity enjoins the court of one country to recognize and enforce of judgments of another country.

The doctrine of Comity on the other hand was discussed in *JP Morgan Chase Bank v Altos Honos De Mexico US Court of Appeal 2nd Circuit in 2004*, as one focusing on maintaining amicable working relationships between nations, a shorthand of good neighborliness, common courtesy and mutual respect between those who labor in adjoining judicial vineyards where the point of law raised, which if decided in one way would be decisive of litigation.

This court takes judicial notice of the fact that Kenya is a Commonwealth country it being a protectorate of Britain. Since the case before hand was a cross border transaction, the justice and its system ought to aid the disadvantaged party in ensuring justice is upheld and business is not victimized or abused by unscrupulous business partners like the respondent.

From the authorities cited, it should therefore be noted that judgment was passed by the Chief Magistrate court at Mombasa, Kenya which is a commonwealth country having a reciprocal arrangement with Uganda.

The respondent company failed to enter a defence and an appearance as per the letter dated 3rd march 2022 where the applicant advised the respondents to enter appearance or they proceed ex-parte. As per the Affidavit of Service of Kalongo Patrick, all due diligence was taken to serve all the Notices of Motion to both the Respondent company's address as well as their lawyers, Alaka & Co Advocates. The Advocate was contacted on his personal mobile phone, email and the hearing date together with the Notice of motion were published in the Daily Monitor Newspaper. However, the Respondent did not file an affidavit in reply or attend court.

According to the judgment entered by the Chief Magistrate of Mombasa, principal amount was stated to be US\\$ 80,800, Interest at 12% p.a from 21st May 2019 which amounts to US\\$ 12,928 making the decretal amount US\\$ 93,728.

This judgment under the circumstances was given on merit and is conclusive in absence any appeal by the respondent. See *American Express International Banking v Atul [1990-1994] EA 10*

The judgment and decree delivered by the Chief Magistrates court at Mombasa vide civil suit number 23 of 2020 shall be registered and executed by this honourable court.

The applicant is awarded costs of this application.

I so order.

SSEKAANA MUSA 27th July 2022 JUDGE.

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