

**THE FOREIGN JUDGMENTS (RECIPROCAL
ENFORCEMENT) ACT, 1984**

No. 4 of 1984

Date of Assent: 11th May, 1984

Date of Commencement: By Notice

ARRANGEMENT OF SECTIONS

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SCHEDULE

An Act of Parliament to make new provision in Kenya for the enforcement of judgments given in countries outside Kenya which accord reciprocal treatment to judgments given in Kenya and for other purposes in connection therewith

ENACTED by the Parliament of Kenya as follows:—

Short title and commencement.

1. This Act may be cited as the Foreign Judgments (Reciprocal Enforcement) Act, 1984, and shall come into force on a date to be appointed by the Minister by notice in the Gazette.

2. (1) For the purposes of this Act—

Interpretation.

“appeal” means proceedings by way of application for the discharge or setting aside of a judgment or for a new trial or a stay of execution;

“country” includes a constituent territory of a country or any territory for whose international relations a country is responsible;

“country of the original court” means the country in which the original court is situated or in relation to which that court has jurisdiction;

“court” includes a tribunal;

“designated court” means—

(a) a superior court of a reciprocating country which is a Commonwealth country;

(b) a superior court of any other reciprocating country which is specified in an order made under section 13;

(c) a subordinate court of a reciprocating country which is specified in an order made under section 13;

“judgment creditor” means the person in whose favour a judgment was given and includes any person in whom the rights under the judgment have become vested by succession, assignment or otherwise;

“judgment debtor” means the person against whom a judgment was given and includes any person against whom the judgment is enforceable under the law of the country of the original court;

“judgments given by the superior courts in Kenya” and “judgments given by subordinate courts in Kenya” include judgments given in any court on appeal against those judgments;

“multiple damages” means an amount payable under a judgment which has been arrived at by multiplying by any factor a sum assessed as compensation for loss or damage sustained by a person in whose favour the judgment was given;

“original court”, in relation to a judgment to which this Act applies, means the court by which the judgment was given and includes an arbitrator or arbitral tribunal by which an arbitral award to which this Act applied was given;

“personal service” means actual delivery of the process to the person to be served therewith, whether effected inside or outside the country in which the process was issued;

“reciprocating country” means a country declared as such for the purposes of this Act by the Minister under section 13 (1);

“registration” means registration under this Act;

“subordinate court” includes a tribunal;

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“subordinate courts in Kenya” means magistrates’ courts as defined in the Magistrates’ Courts Act and any tribunal specified by the Minister for the purposes of this Act;

“superior courts in Kenya” means the High Court and the Court of Appeal.

(2) References in this Act to a judgment of a designated court include references to an award in arbitration proceedings referred to in section 3 (1) (f).

(3) A certificate issued in a reciprocating country with respect to a judgment given by a tribunal or an award in arbitration proceedings in circumstances of the kind mentioned in section 16 (3) (b) constitutes a certificate for the purposes of section 5 (4) (a).

Judgments to
which the Act
applies.

3. (1) Subject to subsections (2) and (3), this Act applies with respect to—

- (a) a judgment or order of a designated court in civil proceedings whereby a sum of money is made payable, including an order for the payment of a lump sum as financial provision for, or maintenance of, a spouse or a former or reputed spouse or a child or other person who is or was a dependant of another;
- (b) a judgment or order of a designated court in civil proceedings under which movable property is ordered to be delivered to any person, including an order for the delivery of movable property as part

of a scheme for the provision for, or maintenance of, a spouse or a former or reputed spouse or a child or other person who is or was a dependant of another;

- (c) a judgment or order of a designated court in criminal proceedings for the payment of a sum of money in respect of compensation or damage to an injured person or for the delivery of movable property by way of restitution to an injured person;
- (d) a judgment given in any court on appeal against a judgment or order of a designated court referred to in paragraphs (a) to (c);
- (e) a judgment of a designated superior court for the costs of an appeal from a subordinate court, whether or not a designated court, or from an award referred to in paragraph (f); and
- (f) an award in arbitration proceedings, if the award has, under the laws in force in the country where it was made, become enforceable in the same manner as a judgment given by a designated court in that country.

(2) This Act applies to a judgment referred to in subsection (1) if it—

- (a) requires the judgment debtor to make an interim payment of a sum of money to the judgment creditor; or
- (b) is final and conclusive as between the parties thereto,

but a judgment is deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(3) This Act does not apply to a judgment or order—

- (a) whereby a sum of money is payable or an item of movable property is deliverable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty;
- (b) to the extent to which it provides for the payment of a sum of money by way of exemplary, punitive or multiple damages;

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- (c) for the periodical payment of money as financial provision for, or maintenance of, a spouse or a former or reputed spouse or a child or other person who is or was a dependant of the person against whom the order was made;
- (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;
- (e) in proceedings in connection with the custody or guardianship of children;
- (f) in proceedings concerning the administration of the property or affairs of a person who is incompetent or incapable of managing and administering his property and affairs;
- (g) in a matter of succession to, or administration of, estates of deceased persons whereby a sum of money is payable or movable property is deliverable;
- (h) in a matter of social security or public assistance whereby a sum of money is payable by or to a public authority or fund;
- (i) in bankruptcy proceedings or in proceedings for the winding-up or re-organization of a corporation or in proceedings for judicial arrangements, compositions or similar matters;
- (j) in proceedings relating to damage, death or injury caused by occurrences involving nuclear matter or the emission of ionizing radiation;
- (k) of a designated court in any proceedings if—
 - (i) the bringing of those proceedings in that court was contrary to an agreement, or to an instrument in respect of which the proceedings were instituted, whereby the dispute, or the proceedings, were to be settled otherwise than in the courts of the reciprocating country; and
 - (ii) those proceedings were not brought in that court by, or with the agreement of, the person against whom the judgment was given; and

- (iii) that person did not counterclaim in the proceedings or otherwise submit to the jurisdiction of the court;
- (l) which is regarded for the purposes of its enforcement as a judgment of a designated country but which was given in another country;
- (m) given by a designated court in proceedings founded on a judgment of a court in another country and having as their object the enforcement of the latter judgment.

4. (1) In proceedings in which it is necessary for the purposes of this Act to determine whether a court of another country had jurisdiction to adjudicate upon a cause of action, that court shall, subject to subsection (2), be treated as having had jurisdiction, where—

Jurisdiction.

- (a) the judgment debtor, being the defendant in the original court, submitted to the jurisdiction of the court by voluntarily appearing in the proceedings;
- (b) the judgment debtor was plaintiff, or counterclaimed, in the proceedings in the original court;
- (c) the judgment debtor, being the defendant in the original court, had, before the commencement of the proceedings, agreed otherwise than in pursuance of some statutory requirement, in writing or by an oral agreement confirmed in writing, to submit, in respect of the subject matter of the proceedings or in respect of disputes of the kind which were the subject matter of the proceedings, to the jurisdiction of the original court or of any other court of the country of the original court;
- (d) the judgment debtor, being the defendant in the original court, was, at the time when the proceedings were instituted, habitually resident in the country of the court or, not being a natural person, had its place of incorporation or its principal place of business in that country, or, if unincorporated, had its headquarters there;

- (e) the judgment debtor, being the defendant in the original court, had an office or place or business in, or, not being a natural person, had a branch (other than a subsidiary corporation) in, the country of that court and the proceedings in that court were in respect of a transaction effected, or an occurrence arising from business carried out, by, through or at that office, place or branch;
 - (f) the judgment debtor, being the defendant in the original court, was conducting business within the country of the original court (otherwise than through a subsidiary corporation), had appointed an agent there to receive service or process in respect of that business and the proceedings in that court were in respect of a transaction effected in connection with, or of an occurrence arising from, that business;
 - (g) in the case of a claim arising out of a contract, the obligation which was the subject of the proceedings was, or was to be, wholly or mainly performed in the country of the original court;
 - (h) in the case of a judgment given in an action *in rem* or any other action to determine rights of ownership, use or possession in immovable property or tangible movable property, the property in question was, at the institution of the proceedings in the original court, situated in the country of that court; or
 - (i) in the case of an action to recover damages for physical injury to the person, or the death of a person, or for damage to tangible property, the circumstances giving rise to injury, death or damage substantially occurred in the country of the original court or the injury or damage was suffered in that country.
- (2) A court shall not be treated as having had jurisdiction under subsection (1)—
- (a) where by reason of the subject matter of the proceedings, exclusive jurisdiction thereto was, under the rules of private international law of Kenya, vested in the courts or authorities of a country other than that of the original court;

(b) by reason only of the fact that the judgment debtor, being the defendant in the original court, appeared (conditionally or otherwise) in the proceedings for all or any of the following purposes—

(i) to contest the jurisdiction of the court;

(ii) to invite the court in its discretion not to exercise its jurisdiction;

(iii) to protect, or obtain the release of, property seized or threatened with seizure in those proceedings;

(c) where the judgment debtor was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not appear otherwise than for the purpose of contesting the jurisdiction of the court.

(3) A finding of fact made (expressly or by implication) by the original court in the proceedings in which the judgment was given and on the basis of which jurisdiction was assumed in those proceedings shall—

(a) if the judgment debtor appeared in those proceedings and did not contest the jurisdiction of the original court, be conclusive evidence of the fact found; and

(b) in any other case be sufficient proof of that fact unless the contrary is shown.

5. (1) Where a judgment to which this Act applies has been given in a designated court, the judgment creditor may apply to the High Court to have that judgment registered within six years of the date of the judgment or, where there have been proceedings by way of appeal against the judgment, of the date of the last judgment in the proceedings.

Application.

(2) An application may be made under subsection (1) *ex parte* in any case in which—

(a) the judgment debtor—

(i) was personally served with process in the original action; or

- (ii) though not personally served, appeared in the original court otherwise than for one or more of the purposes set out in section 4 (2) (b); and
 - (b) under the law in force in the country of the original court, the time within which an appeal may be made against the judgment has expired and no appeal is pending or an appeal has been heard and disposed of.
- (3) Where an application is made under subsection (1) *ex parte*, the court hearing the application, instead of allowing it, may direct a summons to be issued, but if no such direction is given notice of the registration of the judgment made on the application shall be served upon the judgment debtor in accordance, *mutatis mutandis*, with order V of the Civil Procedure Rules.
- (4) An application for registration of a judgment under subsection (1) shall—
- (a) be accompanied by a certificate in the form set out in the Schedule or to the same effect issued from the original court under its seal and signed by a judge or registrar thereof or by an affidavit to the same effect;
 - (b) have attached thereto the judgment or the exemplification or a certified or duly authenticated copy thereof and, where the judgment is not in the English language, a translation thereof in that language certified by a notary public or the registrar of the original court or authenticated by affidavit;
 - (c) be accompanied by an affidavit stating—
 - (i) that, at the date of application, the judgment has not been satisfied or, as the case may be, the sums or items of movable property in respect of which the judgment remains unsatisfied;
 - (ii) that, at the date of application, the judgment can be enforced by execution in the country of the original court;
 - (iii) where, by virtue of section 6 (5), the judgment may be registered only in respect of certain of its provisions, the provisions in respect of which it is sought to register the judgment;

- (d) unless otherwise ordered by the High Court, be accompanied, in the case of a judgment given by a superior court of a Commonwealth country, by a certificate under the seal and signed by a judge or registrar thereof certifying that the court is a superior court in that country;
- (e) be accompanied by such other evidence as may be prescribed.

6. (1) Where, on an application under section 5 (1), the High Court is satisfied as to the proof of matters required by this Act and any rules of court, it shall, subject to this Act, order the judgment to be registered.

Registration.

(2) An order shall not be registered under subsection (1) if it appears to the High Court that—

- (a) it has been wholly satisfied; or
- (b) it could not be enforced by execution in the country of the original court.

(3) If it appears to the High Court that the judgment has been partly satisfied, the judgment may be registered under subsection (1) only in respect of the sums or the items of movable property remaining payable or deliverable.

(4) Where a judgment for the payment of a sum of money is satisfied in part by payment in a currency other than the currency of Kenya, the extent to which the registered judgment has been satisfied shall, for the purposes of subsection (3), be calculated on the basis of the rate of exchange prevailing at the date or dates of payment of the relevant sum or sums.

(5) Where a judgment is not in all respects a judgment which may be registered under this Act but provisions of the judgment could, if they alone constituted the judgment of the original court, be so registered, the court may register those provisions of the judgment.

7. (1) Where a sum payable under a judgment which is to be registered under this Act is expressed in a currency other than the currency of Kenya, the judgment may be registered as a judgment for a sum payable in such sums in Kenya currency as are equivalent thereto on the basis of the rate of exchange prevailing at the time of registration.

Currency in which judgments payable.

(2) For the purposes of this Act, a written certificate purporting to be signed by an officer of any bank in Kenya certifying that a specified rate of exchange prevailed between currencies on a certain date shall be prima facie evidence of the rate of exchange so prevailing on that date.

Effect of
registration
of judgments.

8. (1) Subject to this Act, a registered judgment shall, for the purposes of execution, be of the same force and effect as a judgment of the High Court entered at the date of registration.

(2) Subject to this Act, where a judgment for the payment of any monetary sum is registered, the following sums may be recovered upon the registered judgment—

(a) the amount remaining payable under the judgment, including interest and any costs awarded to the judgment creditor, at the date of registration;

(b) interest from the date of registration on that amount, excluding interest and costs referred to in paragraph (a), calculated at the rate applicable to a judgment of the High Court; and

(c) any reasonable costs awarded by the High Court in respect of registration, including the costs of obtaining a certificate or exemplification, or copy of a judgment or a translation thereof, for the purposes of section 5 (4).

(3) Subject to this Act, where a judgment for the delivery of movable property is registered, the following sums may also be recovered upon the registered judgment—

(a) any costs awarded to the judgment creditor remaining payable at the date of registration;

(b) any reasonable costs awarded by the High Court in respect of registration, including the costs of obtaining a certificate or exemplification, or copy of a judgment or a translation thereof, for the purposes of section 5 (4).

(4) Unless the High Court otherwise orders, execution upon a registered judgment shall be stayed—

(a) in the case of an application made *ex parte*, until the expiration of fourteen days from the date on which the judgment debtor is served with a notice of regis-

tration under section 5 (3) or such extended period as the court may order; or

- (b) where an application that the registration be set aside is made under section 10 or section 11, until the application is finally determined.

9. (1) At the time of, or at any time subsequent to, making an application for registration under section 5, the applicant may apply *ex parte* to the High Court for an order that all debts, obligations and liabilities due or accruing due to the judgment debtor from any person named in the application (in this section referred to as "the garnishee") be attached.

Garnishee orders.

(2) The High Court upon an application under subsection (1) may, upon the production of such further evidence as it may require and if it deems it proper, order the garnishee to pay the judgment creditor the amount of the debts, liabilities or obligations due or accruing due to the judgment debtor from the garnishee or so much thereof as is sufficient to satisfy the registered judgment and the costs of the proceedings pursuant to this section.

(3) Subject to this section, the rules of court with respect to the attachment of debts due to judgment debtors shall apply to proceedings pursuant to this section.

10. (1) Where a judgment has been registered under this Act an application may be made by the judgment debtor that the judgment be set aside on any of the grounds set out in subsection (2) or (3), and if the High Court is satisfied that any of those grounds has been established it shall set aside the registration of the judgment.

Setting aside.

(2) The grounds upon which a registered judgment may be set aside are that—

- (a) the judgment is not a judgment to which this Act applies;
- (b) the judgment was registered in contravention of this Act;
- (c) the courts of the country of the original court had no jurisdiction to adjudicate upon the cause of action upon which the judgment was given;

(c) the matter in relation to which the judgment was given is the same as that in respect of which proceedings, instituted prior to the institution of the proceedings in the original court, are pending in a court in Kenya.

(2) Where the High Court is satisfied that the grounds specified in subsection (1) (a) or (b) are established, it may, on such terms as it thinks just, set aside the registration or adjourn the application until the expiration of such period as appears to the High Court to be reasonably sufficient to enable the proceedings, and any appeal therefrom to a competent tribunal, to be disposed of.

Effect of setting aside in certain cases.

12. (1) Where the registration of a judgment is set aside—

(a) under section 11; or

(b) solely for the reason that the judgment was not at the date of application for registration enforceable by execution in the country of the original court,

the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal or the proceedings have been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(2) Where the registration of a judgment is set aside solely for the reason that the judgment was registered for the whole sum payable, or all the items deliverable, thereunder, notwithstanding that it had at the date of the application for registration already been partly satisfied, the High Court shall, on the application of the judgment creditor, order the judgment to be registered for the amount remaining payable, or items remaining deliverable, as the case may be, at that date.

Extension of Act.

13. (1) Where the Minister is satisfied that provisions which are substantially reciprocal will be or have been made by a country outside Kenya for the enforcement therein of judgments given by the superior courts in Kenya, he may, by order, declare that country to be a reciprocating country for the purposes of this Act and that this Act shall apply with respect to judgments given by the superior courts of that country.

(2) An order made under subsection (1) shall, where the reciprocating country is not a Commonwealth country, specify the courts which are deemed to be the superior courts of that country for the purposes of this Act.

(3) Where the Minister is satisfied that provisions which are substantially reciprocal will be or have been made by a country outside Kenya for the enforcement therein of judgments given by subordinate courts in Kenya, he may, by order, declare that this Act shall apply with respect to judgments of the subordinate courts of that country and the order shall specify the courts in that country which are deemed to be subordinate courts for the purposes of this Act.

14. The Minister may, in order to give effect to an agreement between Kenya and any country, other than a Commonwealth country, in relation to the enforcement of judgments, make, in the order declaring that country a reciprocating country, provision for exceptions, adaptations and modifications to this Act or rules of court as are specified in the order.

Special provision with respect to non-Commonwealth countries.

15. The Chief Justice may make rules of court prescribing any matters necessary or expedient for the purposes of this Act and, without prejudice to the generality of the foregoing, rules of court may—

Rules of court.

- (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.

16. (1) Subject to this section, where a judgment under which a sum of money is payable or item of movable property is deliverable has been entered in a superior or subordinate

Certificates.

court in Kenya against any person and the judgment creditor wishes to enforce the judgment in a reciprocating country, the court shall, on the application of the judgment creditor and on payment of the prescribed fee, issue to him—

(a) a certified copy of the judgment; and

(b) a certificate, in the form set out in the Schedule, or to the same effect, containing such particulars as are therein mentioned with respect to the proceedings, including the cause of action and the rate of interest, if any, payable on any sum payable and, where the judgment was given in a superior court and the judgment creditor wishes to enforce the judgment in a Commonwealth country, certifying that the court in which the judgment was given is a superior court in Kenya.

(2) An application under subsection (1) shall not be made with respect to a judgment—

(a) under which a sum of money is payable or any movable property is deliverable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty; or

(b) the execution of which is stayed for any period pending an appeal or for any other reason, until the expiration of that period.

(3) In the case of a judgment given by a tribunal or of an award in arbitration proceedings—

(a) the certified copy of the judgment or award shall be issued by the chairman of the tribunal or arbitration tribunal or the arbitrator;

(b) the certificate referred to in subsection (1) (b) shall, with such modifications as circumstances dictate, be issued by the High Court and the certificate shall state that the award is enforceable as a judgment of the High Court under the law of Kenya.

Exclusion of
certain
proceedings.

17. (1) No proceedings, other than proceedings by way of a judgment or by way of execution of a judgment so registered, shall be entertained by any court in Kenya which are brought by a judgment creditor to recover a sum of money payable or an item of movable property deliverable under a judgment to which this Act applies and which is registrable.

(2) No proceedings shall be entertained by any court in Kenya which are brought by a judgment debtor for the recovery of a sum payable under a judgment of a court outside Kenya to the extent to which it is a judgment for exemplary, punitive or multiple damages.

18. (1) Subject to this section, a judgment of a designated court shall be recognized in any court in Kenya as conclusive between the parties thereto, as to the matter adjudicated upon, in all proceedings (no matter by which of the parties in the designated court they are instituted) on the same cause of action and may be relied upon by way of defence or counterclaim in those proceedings.

Recognition of certain foreign judgments.

(2) This section shall not apply in the case of a judgment which—

(a) has been registered and the registration thereof has been set aside on some ground other than—

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied; or

(iii) that, at the date of the application, the judgment could not be enforced by execution in the country of the original court; or

(b) has not been registered but it is shown that registration would have been set aside on an application for that purpose on some ground other than those specified paragraph (a).

(3) Nothing in this section shall be taken to prevent a court in Kenya recognizing a judgment as conclusive of any matter of law or fact decided therein under any other statutory provision in that regard or if that judgment would have been so recognized before the passing of this Act, but no such recognition shall be accorded, if it is sought in proceedings in respect of a different cause of action from that on which the judgment was given, until after the expiration of such period as appears to the court to be reasonably sufficient to enable any appeal in respect of the judgment to be instituted and disposed of by a competent tribunal; and the court may, on such terms as it thinks just, adjourn the proceedings until that time.

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(4) For the purposes of this section "judgment" means—

(a) a judgment to which this Act applies whether or not it is registrable and, if registrable, whether or not it is registered; and

(b) any other judgment or order (by whatever name called) given in any civil proceedings which is final and conclusive between the parties,

and the expression "final and conclusive" has the meaning assigned to it in section 3 (2).

Repeal and transitional provisions. Cap. 43.

19. (1) The Foreign Judgments Enforcement Act is repealed.

(2) A judgment registered in the High Court under the repealed Act before the commencement of this Act shall be deemed to have been registered under this Act and anything done in relation thereto under that Act or any rules of court or other provisions applicable to that Act shall be deemed to have been done under this Act or the corresponding rules of court or other provisions applicable to this Act.

(3) An application for registration of a judgment under the repealed Act which is pending at the date of commencement of this Act shall be deemed to have been made under this Act.

SCHEDULE (s. 16)

CERTIFICATE

It is hereby certified that there has been duly entered in the records of the Court at before the Honourable a judge of that court, a judgment in an action numbered as No. Between

Plaintiff(s) (*giving name and business address*)

And

Defendant(s) (*giving name and business address*)

It is also certified that—

(1) the plaint was issued on the day of, 19.... and proof was furnished to this court that it was served on the defendant by—

(a) personal service;

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- (b) substituted service;
- (c) other form of service (*which is to be stated*)
- (2) the defendant made an appearance personally/by a lawyer
(*if merely to contest jurisdiction, this should be stated*)

—OR—

the defendant made no appearance.

- (3) no defence was entered and judgment was allowed by
(*state whether proof, default or order*)

—OR—

a defence was entered and judgment was allowed at the trial.

- (4) judgment was given on the (*date*)
- (5) (a) there is a right to appeal to
/no right of appeal;
- (b) an appeal has been heard and dismissed; or
- (c) an appeal has been instituted and is pending and a stay
of execution has not been granted; or
- (d) no appeal has been instituted and the time for appeal has
expired/has not expired.
- (6) the particulars of the judgment are as follows—

Claim allowed:

Costs to judgment:

Subsequent costs:

Interest due at (*date*):

Extent to which judgment satisfied at (*date*):

Balance or items remaining due at (*date*) including costs
and interest:

(*Details of debt or items subject to judgment to be inserted*)

Certified by (*name*)
..... (*office*)

SEAL

on this day of, 19....