



**JM v PM aka PMM (Land Case E011 of 2024)
[2025] KEELC 5534 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5534 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
LAND CASE E011 OF 2024
MD MWANGI, J
JULY 24, 2025**

BETWEEN

JM PLAINTIFF

AND

PM AKA PMM DEFENDANT

JUDGMENT

Background

1. By way of a plaint dated 7th February 2024, the Plaintiff herein instituted this suit against the Defendant in which he sought the following orders:
 - a. A declaration that the Marital Settlement Agreement dated 13th May 2021 between the Plaintiff and the Defendant and the Final Judgement of Divorce in Gloucester County Superior Court Docket No. FM-08-700-20, PM Versus JM is binding and enforceable as against the Defendant and or in Kenya.
 - b. A Mandatory injunction against the Defendant compelling them to sign and or execute a transfer and all necessary documents for conveyance to transfer the parcel of land known as Kajiado/Kaputiei North/xxx in the Plaintiff's favour and in default the Deputy Registrar, Environment and Land Court Kajiado does execute the transfer and or said documents of transfer and or conveyance.
 - c. Costs of the suit be borne to the Defendant.
2. The Plaintiff and the Defendant entered into a Marital Settlement dated 13th May 2021, in which they agreed inter alia as follows:

“Kenyan Properties- a. House no. 14 Royal Finesse , Kitengela, Kajiado County. The residence was appraised for 18 million shillings which equates to \$180,000 US Dollars. Wife



is entitled to \$90,000.00 which is represented in the \$68,000.00 from Husband's proceeds. Wife will sign any documentation that is necessary within fourteen days after the date of divorce. Husband shall supply all documentation to Wife post-divorce.

- b. The lots in Kenya shall become the sole property of the Husband subject upon the parties' children, J and J, being heirs to those family lots that Husband represents were purchased from his stepbrothers, owned by Husband. Husband shall provide proof within 45 days from the date of the signed agreement to Wife that the children are the heirs to the lots.

...

Documents -

Husband and Wife hereby agree to execute any and all other papers or instruments in writing if and when such execution shall be necessary, in order to effectuate the express conditions of this Agreement.

...

Incorporating Agreement into Judgement - This Agreement and any Scheduled may be offered in evidence by either of the parties in any matrimonial action at any time pending between the parties or in any action or proceeding of any nature in which the same may be material and relevant.

The parties agree and hereby stipulate that this Agreement shall be incorporated in any decree or Judgement of Divorce entered in any such action between the parties, whoever may be the Plaintiff.

Judgement of Divorce- It is specifically agreed and understood, however, that the Agreement shall not be invalidated or otherwise affected by any decree of Judgement of Divorce of any other Judgement in a matrimonial action between the parties, whoever may be the Plaintiff. Moreover, the obligations and covenants of this Agreement shall survive and not be merged into any such decree or Judgement. No insertion in any such decree of Judgement shall, in any way alter the provisions of terms of this Agreement.

3. The Superior Court of New Jersey issued a Final Judgement of Divorce in Docket No. FM-08-700-20, PM v JM in which the marriage between the Plaintiff and the Defendant was dissolved. Further, the court in the said decision ordered as follows:-

“That the following terms of a Settlement Agreement reached by the parties are hereby incorporated in and made part of this judgement, with the understanding that the court took no testimony and did not pass upon the merits of the Agreement, except that this Court had determined that both parties have voluntarily entered into the Agreement and accepted the terms of thereof is fair and equitable to each; that the parties were each represented by counsel; that they have disclosed all assets and liabilities in the matter and are satisfied with their understanding of the assets in this matter and have waived their right to complete discovery; that the parties hereto acknowledge that each and every provision of this agreement is understood by him or her; that the Agreement has been entered into freely and voluntarily without coercion or duress of any kind; that the provision contained therein are fair and equitable under the circumstance and that he or she has carefully read and understands the provisions of the Agreement and intends to be bound by the terms and conditions of the said agreement.”



4. The Plaintiff in the instant suit avers that, pursuant to the said Marital Settlement Agreement and the Final Judgement of Divorce, they executed all the requisite documents for distribution of all the assets and properties in the USA; the proceeds of which were shared accordingly.
5. The Plaintiff contends that in breach of the terms of the Marital Settlement Agreement as well as the Final Judgement of Divorce, the Defendant has failed, declined and or neglected to execute the requisite conveyance and or transfer documents as regards the suit property. Despite issuance of a demand letter and notice of intention to sue, the Defendant has failed to make good the Plaintiff's claim.
6. The Plaintiff averred that an application for execution of the Final Judgement of Divorce regarding the suit property was declined on account of jurisdiction in view of the fact that the Superior Court of New Jersey has no jurisdiction over properties registered in foreign countries. The United States of America is not a Reciprocating Country under the Foreign Judgements (Reciprocal Enforcement) Act; thus the Final Judgement of Divorce is to be enforced through the instant suit.
7. This court on 25th February 2025 granted leave to facilitate service through alternative means pursuant to the provisions of Order 5 of the Civil Procedure Rules. The Defendant was served both electronically i.e. through Electronic Mail service and personally i.e. vide an Internationally Registered and Recognized Courier Service Provider. The Defendant in spite of service neither entered appearance nor filed a statement of defence.
8. The court directed the matter proceeds to hearing undefended. The Plaintiff testified virtually as PW1; relying upon his witness statement dated 7th February 2024 which was adopted as his evidence in chief. The Plaintiff also adduced as documentary evidence, all the documents listed in the Plaintiff's list of documents dated 7th February 2024, the evidence of which has been subjected to the court's consideration in the writing of this judgement.

Plaintiff's Submissions

9. The Plaintiff in his submissions identified the sole issue for determination as whether the Foreign Judgement (Reciprocal Enforcement) Act is a bar to the suit. The Plaintiff submitted that it is trite that the United States of America is not listed as a Reciprocal Country under the Foreign Judgement (Reciprocal Enforcement) Act. Therefore, the suit herein does not constitute the conventional enforcement proceedings even though it is related to enforcement of a foreign judgement. The Plaintiff categorically brings to the court's attention the fact that the said judgement is in essence a cause of action. The Plaintiff places reliance on the Court of Appeal Case of *Jayesh Jasmukh Shah v Navin Haria & another* (2016) eKLR, where the court opined that foreign judgements are enforceable as debts or as causes of action through ordinary suits commenced by way of a Plaint. Moreover, the Plaintiff takes into account the provisions of Section 9 of the [Civil Procedure Act](#) which sets forth the requirements for enforcement of foreign judgments in Kenya from a non-designated country.

Issues for Determination

10. Upon considering the pleadings by the Plaintiff, the evidence adduced, the documentary evidence supporting his position and the final submissions, these are the issues that this court has identified for determination:
 - a. Whether the Foreign Judgement (Reciprocal Enforcement) Act is a bar to the Plaintiff's suit.
 - b. Whether the Plaintiff should be granted the reliefs as sought.



Analysis and Determination

11. The Plaintiff has approached this Court seeking, in essence, the recognition and enforcement of rights flowing from the Marital Settlement Agreement dated 13th May 2021 and the Final Judgment of Divorce issued by the Superior Court of New Jersey in Docket No. FM-08-700-20. The Defendant has, despite service by alternative means duly sanctioned by this Court, neither entered appearance nor filed a defence, and the matter has therefore proceeded undefended.
12. The question of whether the *Foreign Judgments (Reciprocal Enforcement) Act*, Cap 43 Laws of Kenya (hereinafter “the Act”) bars this action must be addressed at the outset. Section 3(1) of the Act provides:

“This Act applies to judgments obtained in the superior courts of the United Kingdom or any other foreign country which the Minister may, by order, declare to be a reciprocating country.”

13. The United States of America has not been declared a reciprocating country under the Act. Consequently, the statutory procedure for registration of foreign judgments under the Act is unavailable to the Plaintiff. That, however, does not preclude enforcement through a fresh action based on the foreign judgment or the underlying cause of action. Section 9 of the *Civil Procedure Act*, Cap 21 Laws of Kenya, is instructive that:

“Where a foreign judgment has not been declared by the Minister to be from a reciprocating country, such judgment may still be enforced by a suit upon the judgment, and a copy of the judgment duly authenticated shall be conclusive proof of the decision and the legal obligation created thereby...

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties ... except—

- (a) where it has not been pronounced by a court of competent jurisdiction;
- (b) where it has not been given on the merits;
- (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of Kenya;
- (d) where the proceedings - are opposed to natural justice;
- (e) where it has been obtained by fraud; or
- (f) where it sustains a claim founded on a breach of any law in force in Kenya.”

Enforcement remains available by way of a common law action based on the judgment itself.

14. The Court of Appeal in *Jayesh Jasmukh Shah -vs- Navin Haria & Another* [2016] eKLR, comprehensively restated the requirements for enforcement of foreign judgments from non-designated countries::

“Where a foreign judgment emanates from a country that is not declared a reciprocating country under the *Foreign Judgments (Reciprocal Enforcement) Act*, such a judgment is not incapable of enforcement in Kenya. It may still be enforced by instituting ordinary proceedings in our courts by way of a plaint, treating the judgment as constituting a fresh



cause of action. The judgment constitutes a debt between the parties, and the court called upon to enforce it need not re-examine the merits of the original dispute.” ...to enforce a foreign judgment in Kenya from a non-designated country, the following requirements must be fulfilled:

1. A party must file a plaint at the High Court of Kenya providing a concise statement of the nature of the claim, claiming the amount of the judgment debt, supported by a verifying affidavit, list of witnesses and bundle of documents intended to be relied upon. A certified copy of the foreign judgment should be exhibited to the Plaintiff.
2. It is open to a Defendant to challenge the validity of the foreign judgment under the grounds set out in Section 9 of the *Civil Procedure Act*.
3. A judgment creditor is entitled to summary judgment under Order 36 unless the Defendant judgment debtor can satisfy the Court that there is a real prospect of establishing at trial one of the grounds set out in Section 9 of the *Civil Procedure Act*.
4. If the foreign judgment creditor is successful after trial, the judgment creditor will have the benefit of a High Court judgment and the judgment creditor will be entitled to use the procedures of the Kenyan courts to enforce the foreign judgment which will now be executed as a Kenyan judgment.
5. The money judgment in the foreign judgment must be final and conclusive. It may be final and conclusive even though it is subject to an appeal. Under Section 9 of the *Civil Procedure Act*, a foreign judgment is conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim, litigating under the same title except: (a) where it has not been pronounced by a court of competent jurisdiction; (b) where it has not been given on the merits of the case; (c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of Kenya in cases in which such law is applicable; (d) where the proceedings in which the judgment was obtained are opposed to natural justice; (e) where it has been obtained by fraud; or (f) where it sustains a claim founded on a breach of any law in force in Kenya.”

15. Similarly, in *Haria v Shah* [2024] KECA 527 eKLR, the Court reaffirmed the Jayesh Shah’s decision holding that,

“Although no treaty exists ... in the absence of a reciprocal enforcement arrangement, a foreign judgment is enforceable ... as a claim in common law, while taking into account the provisions of Section 9 ...”

16. The Supreme Court in *Ingang’a & Others v James Finlay (Kenya) Ltd* [2023] KESC 22 eKLR, affirmed that foreign orders require recognition proceedings in Kenya, where courts ensure compliance with public policy, jurisdiction, and due process:

“Decisions by foreign courts and tribunals are not automatically recognized or enforceable in Kenya. They must be examined by the courts in Kenya for them to gain recognition and to be enforced. Consequently, Kenya as a sovereign State could not automatically allow citizens,



individuals or officers of a foreign state to carry out upon its own territory the decisions of a foreign court, without authorization from the Kenyan Government upon recognition of the decision of the foreign court or tribunal. Such an action would violate the principle of sovereignty enshrined in the Constitution.”

17. The decision of the Supreme Court in *Ingang’a & Others v James Finlay (Kenya) Ltd* [2023] KESC 22 is instructive in affirming that foreign judgments are not self-executing in Kenya and must undergo recognition proceedings before they can be enforced. The Court underscored that automatic enforcement of foreign orders would contravene Kenya’s sovereignty, and that Kenyan courts must first be satisfied as to jurisdiction, public policy, and due process. In light of that holding, the Plaintiff was justified to institute the present proceedings by way of a plaint, treating the foreign judgment as a fresh cause of action in accordance with common law and Section 9 of the Civil Procedure Act, thereby inviting this Court to examine and, where appropriate, recognize the judgment within the framework of Kenyan law.
18. In the instant matter, the Plaintiff has tendered duly authenticated copies of the Marital Settlement Agreement and the Final Judgment of Divorce. It is clear on their face that the parties entered into the agreement voluntarily, were represented by counsel, and that the Superior Court of New Jersey incorporated the terms of the Marital Settlement Agreement into its judgment after satisfying itself that the same was fair and equitable. There is nothing before this Court to suggest that the said judgment offends public policy, was obtained fraudulently, or that the Defendant was denied a hearing.
19. Accordingly, I find and hold that the Act does not bar the present suit. The Plaintiff is properly before this Court, having instituted an ordinary civil action based on a valid cause of action recognized under Kenyan law.
20. The Plaintiff seeks, inter alia, a declaration that the Marital Settlement Agreement and Final Judgment of Divorce are binding and enforceable against the Defendant in Kenya, and a mandatory injunction compelling the Defendant to execute the necessary conveyance documents for the transfer of the parcel of land known as Kajiado/Kaputiei North/xxx to the Plaintiff.
21. The evidence adduced by the Plaintiff, which remains uncontroverted, demonstrates that under the Marital Settlement Agreement, the suit property was among those properties allocated to the Plaintiff exclusively, subject only to the preservation of the children’s inheritance rights as expressly stipulated in the agreement. The Plaintiff has further demonstrated compliance with his obligations under the marital settlement agreement, including the execution of the requisite documents for distribution of assets in the United States and payment of sums due to the Defendant.
22. The Defendant, on the other hand, has failed, refused, and/or neglected to execute the transfer documents despite repeated demands. This Court is persuaded that such refusal constitutes a clear breach of a binding agreement and frustrates the Plaintiff’s proprietary rights.
23. The remedy sought is a mandatory injunction, which compels a party to perform a specific act. The guiding principles for granting or denial thereof of injunctions were set out in *Giella v Cassman Brown & Co. Ltd* [1973] EA 358, where Spry V.P. held:

“The conditions for the grant of an interlocutory injunction are, first, that the applicant must show a prima facie case with a probability of success; secondly, that an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages; thirdly, if the court is in doubt, it will decide the application on the balance of convenience.”



24. Although the Giella case dealt with interlocutory injunctions, the principles equally guide the Court in determining whether a permanent or mandatory injunction ought to issue. A mandatory injunction is issued in the clearest of cases where the Defendant's wrongful act is established, and where justice demands that the status quo be altered to restore the rightful state of affairs.
25. Applying these principles, I find that the Plaintiff has demonstrated a clear legal right to the property in question, arising from a binding Marital Settlement Agreement and a Final Judgment of Divorce. Continued refusal by the Defendant to execute the transfer deprives the Plaintiff of proprietary rights which cannot be adequately compensated by damages. The balance of convenience, too, tilts overwhelmingly in favour of the Plaintiff, who merely seeks to perfect his title in accordance with the parties' settlement agreement.
26. This Court is also guided by its equitable jurisdiction to ensure that agreements solemnly entered into are not rendered illusory. Equity regards as done that which ought to have been done. The Defendant, having voluntarily agreed to transfer the property and having enjoyed the benefits of the settlement, cannot now go back on her obligations to the detriment of the Plaintiff.
27. For the foregoing reasons, I find the Plaintiff's suit merited and enter judgment in his favour as follows:
 - a. A declaration is hereby made that the Marital Settlement Agreement dated 13th May 2021 and the Final Judgment of Divorce in Gloucester County Superior Court Docket No. FM-08-700-20, PM v JM, are binding and enforceable as against the Defendant in Kenya.
 - b. A mandatory injunction is hereby issued compelling the Defendant to forthwith sign, execute, and/or deliver all such documents as may be necessary to transfer the parcel of land known as Kajiado/Kaputiei North/xxx to the Plaintiff, in 45 days from the date of this judgement failing which the Deputy Registrar of this Court shall execute the same without any further reference to this court.
 - c. The costs of this suit are awarded to the Plaintiff.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24TH DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Muluvi h/b for Mr. Mutua SC for the Plaintiff

Court Assistant: Edwin

M.D. MWANGI

JUDGE

