

**A GUIDE TO FOREIGN
JUDGEMENTS IN KENYA**





FOREIGN JUDGEMENTS IN KENYA

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LEGAL FRAMEWORK

The primary statute that regulates the enforcement of foreign judgments in Kenya is the **Foreign Judgments (Reciprocal Enforcement) Act, Cap 43** (“Act”). The objective of the **Act** is to make provision for enforcement of judgments given in countries outside Kenya which accord reciprocal treatment to judgments given in Kenya.

Under the **Act**, a judgment creditor with a foreign judgment issued by a “designated country” may apply to register it with the High Court of Kenya 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. Once

registered, this foreign judgment holds the same enforceable status as a judgment issued by the High Court of Kenya as of the registration date. The designated countries under the **Act** include Australia, Malawi, Seychelles, Tanzania, Uganda, Zambia, the United Kingdom, and the Republic of Rwanda.

For Judgments from non-designated, common-law principles will apply. The Court of Appeal in the case of **Jayesh Hasmukh Shah v Navin Haria & Another [2016] eKLR** cited with approval the case of **Keshavji Ramji Ladha -v- Bank of Credit and Commerce International – SA (BCCI), Civil Appeal No. 44 of 2004**, where the Court had earlier observed that;

“It is now trite in civil litigation in this jurisdiction that a judgment of whatever nature, whether foreign or otherwise, is good until otherwise declared. But it is not in its form as a judgment per se that it is capable of being enforced. It has to take the shape of another procedural document before it can reach any execution stage”.

The Court further held that;

“...In the absence of a reciprocal enforcement arrangement, a foreign judgment is enforceable in Kenya as a claim in common law...”

1. Criteria for enforceability

The general criteria for enforcement of foreign judgments can be outlined as follows:

- a. The foreign judgment must be final and have no conflict with prior judgments.
- b. A foreign judgment is final for enforcement purposes even if an appeal is pending against it in the foreign jurisdiction.
- c. The judgment of a foreign court that cannot be enforced by execution in that state’s court cannot be enforced by a Kenyan court.
- d. The foreign court must have had jurisdiction over the defendant.
- e. The defendant must have been given notice of the court proceedings against him in conformity with the rules of natural justice and due process of law.
- f. The foreign judgment must not be contrary to Kenyan public policy.
- g. The foreign judgment is only enforceable within six years of the date of judgment or six years after the last judgment where there may have been appeals from the original judgment.

2. Procedure for enforcement of foreign judgments from a designated country

The procedure for enforcement of a foreign judgment from designated countries where there is a reciprocating enforcement mechanism is provided under Section 5 of the Act. A party files a formal application in the High Court in a prescribed form. The motion is to be accompanied by an affidavit confirming that the judgment has not been satisfied and a certified copy of the judgment must be exhibited. A certificate under the seal of the foreign judge certifying the status of the court may be required.

3. Procedure for enforcement of Judgments from a non-designated country

The Court in **Raw Bank PLC v Yusuf Shaa Mohamed Omar & another [2020] eKLR** considered the applicable common law principles and taking into account the provisions of **Section 9** of the **Civil Procedure Act** as the Appellant sought to enforce and execute in Kenya a Judgment from Democratic Republic Congo which is not a designated country. The Court provided the procedure as follows: A party files a plaint at the High Court providing a concise statement of the nature of claim, the amount of the judgment debt, supported by a verifying affidavit, a list of witnesses and a bundle of documents intended to be relied upon as well as a certified copy of the foreign judgment. The Court further set down the following requirements to be fulfilled by a Judgment Debtor in enforcing a foreign judgment in Kenya from a non-designated country:

- a. 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.

- b. 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.
- c. 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.
- d. 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.
- e. Under Section 4 (4) of the Limitation of Actions Act, (Cap 22 of the Laws of Kenya) an action for enforcement of a foreign judgment must be brought in Kenya within 12 years of the date of that judgment.
- f. The foreign court must have had jurisdiction, (according to the Kenyan rules on conflict of laws) to determine the subject matter of the dispute and the parties to the foreign court's judgment and the enforcement proceedings must be the same or must derive their title from the original parties.

4. Costs and expenses

A party can expect the following costs in the enforcement procedure;

- a. Security for Costs.
- b. Court filing fees
- c. Legal fees

CONCLUSION

The Kenyan Supreme Court has since settled the debate on the need for foreign judgments to be recognized in Kenya before they can be enforced. In the recent case of **Ingang'a & 6 others v James Finlay (Kenya) Limited (Petition 7 (E009) of 2021) [2023] KESC 22 (KLR)**, the Kenyan Supreme Court dismissed an appeal for the recognition and enforcement of a locus inspection order issued by a Scottish Court. The Kenyan Supreme Court held that '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'

The Supreme Court has therefore established that recognition is necessary before foreign judgments can be enforced in Kenya.

While the enforcement of foreign judgments in Kenya is feasible, understanding the applicable legal requirements and procedures is essential. Parties are encouraged to seek legal guidance to streamline the process and avoid potential hurdles.

DISCLAIMER

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