

 **Global Journal of Arts Humanity and Social Sciences**
ISSN: 2583-2034
Abbreviated key title: Glob.J.Arts.Humanit.Soc.Sci
Frequency: Monthly
Published By GSAR Publishers
Journal Homepage Link: <https://gsarpublishers.com/journal-gjahss-home/>



Volume - 5 | Issue - 10 | October 2025 | Total pages 908-911 | DOI: 10.5281/zenodo.17380716

A COMPARATIVE ANALYSIS ON RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN TANZANIA AND KENYA

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Article History

Received: 07- 10- 2025

Accepted: 15- 10- 2025

Published: 17- 10- 2025

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Abstract

This article discusses the recognition and enforcement of foreign judgments under private international law in Tanzanian and Kenyan Courts. The concept of recognition and enforcement of foreign judgments under private international law and under common law countries, reasons behind recognition of a foreign law, grounds for denial of recognition of foreign judgments, theories applied in recognition and enforcement of foreign judgments under private international law, the procedures for recognition and enforcement of foreign judgments in Tanzania, the recognition and enforcement of foreign judgments in Tanzania and Kenya, the general requirements and exceptions for recognition and enforcement of foreign judgments have been well discussed with conclusion and recommendations.

Key Words: Recognition, Enforcement Foreign Judgment, Private International Law

Introduction

The recognition and enforcement of foreign judgments is the evidences on the good and friendly relationship between Statesⁱ and any integration initiative is mostly motivated by an effective recognition and enforcement of foreign decisions regimes.ⁱⁱ The developing countries Tanzania and Kenya inclusive have made a massive progressesⁱⁱⁱ in opening their economies and encourage inflow of foreign direct investment from developed economies. In their efforts to resuscitate economic activity they have reduced bureaucratic hindrances and interferences in their economies, invested on privatization programs and are putting in place of foreign capital investment and movement of people in various countries in the world including Tanzania and Kenya.^{iv}

Tanzanian and Kenyan companies are increasing their capacity to invest abroad. The results of liberalization leads to free movements of casual labor like skilled persons. People moves from one State to another and thus the probabilities of dispute is inevitable. It is the general principle that judgments of one State's courts have no force by themselves in another State. Therefore the question to be discussed here is whether the judgement rendered in one State can

be recognized and enforced in another State and how the recognition and enforcement is done. Due to interstate relations and inevitability of disputes the recognition and enforcement of foreign judgments is very crucial. Therefore this article deals with the aspect of recognition and enforcement of foreign judgments with reference to Tanzania and Kenya as the case study.^v This article discusses the recognition and enforcement of foreign judgment in Tanzania and Kenya based on the laws applicable in the respective States.^{vi} The article also highlights the court decisions in the respective States. It also dealt with the conditions for recognition and enforcement of foreign judgments in the respective States and finally conclusion and recommendations.

The Concept of Recognition and Enforcement of Foreign Judgments under Private International Law

The recognition and enforcement of foreign judgment occurs when the court of one State accepts a judgment rendered by the court of another foreign State and issues identical terms to that judgment without conducting another hearing on the substance of the original decision. Under common law countries judgment means that



judgment rendered by the foreign court with competent jurisdiction. For instance, a Kenyan judgment is a foreign judgment to Tanzania. Foreign judgment provisions are dealt in each country Civil Procedure Code to include Tanzania^{vii} and Kenya.^{viii}

Generally, the judgments of one State's courts have no force by themselves in another State due to the Sovereignty of each State. Recognition and enforcement of foreign judgments under private international law is one of the three aspects of conflict of laws other aspects are jurisdiction and choice of law. The foreign judgments has three effects which are to be distinguished, firstly, it presents a fact, regardless of its recognition,^{ix} secondly recognition process precludes re-litigation of the same issues in enforcing courts,^x and thirdly, enforcement presupposes but goes beyond recognition, and lets the successful party enforce his judgment in another State and the enforcement procedure is done based on domestic law and varies greatly among legal systems.

Recognition of Foreign Judgment under Common law Countries

Both Tanzania and Kenya are common law based countries and the common law doctrine of equity and statutes of general application are enforceable in Tanzania.^{xi} Under common law legal system, for a foreign judgment to be recognized and enforced must meet the following conditions; one it must be final and conclusive in the court which pronounced it; and two, it must have been rendered by the court with competent jurisdiction. The foreign judgment is enforced when the judgment creditor institutes a fresh proceedings in the enforcing State, setting out the circumstances of the judgment debt and how the two pre requisites are met.

Grounds for Denial of Recognition of Foreign Judgments

There are various grounds which the court of one State can deny to recognize and enforce the foreign judgment and no State can force other State to recognize and enforce their country's court judgment to the court of another State. These conditions includes when it has not been rendered by the court with competent jurisdiction,^{xii} where it has not been given on the merits of the case, where the proceedings in which the judgment was obtained as opposed to natural justice, where it has been obtained by fraud and where it sustains a claim founded on a breach of any law in force in Tanzania or Kenya.^{xiii} Recognition and enforcement of foreign judgment will be generally denied if the judgment is substantively incompatible with basic legal principles in the recognizing country, a foreign judgment is not applicable in criminal cases and not applicable for payment of any customs duty, tax or penalty.^{xiv}

Theories applied in Recognition and Enforcement of Foreign Judgments under Private International Law

Private international law is categorized into three important aspects. Recognition and enforcement of foreign judgments is one among those aspects and other aspects are choice of law and

jurisdiction. Recognition and enforcement of foreign judgments as important aspect in private international law is governed by the following theories:

Theory of Comity

The theory requires each state to recognize the legitimate the laws of other States, in the expectation that those other States in turn would recognize the laws of the first State and this is influenced by the so called reciprocal arrangements between the States.^{xv} In legal perspective comity means reciprocity, the principle that one jurisdiction will extend certain courtesies to other States within the same State. Foreign judgments are applied due to its convenience and the State wants to provide protection to its citizens, residents, and transients in State land. Based on reciprocity and comity States allow visitors to drive four wheelers with drivers' licenses from other states; recognize marriages and adoptions in other States; and often grant professional licenses to migrants or visitors. For instance Tanzanian court recognizes and enforces the judgment of Kenya and in the same reciprocity a Kenyan court recognizes and enforces the judgment of Tanzania.^{xvi}

Theory of Vested Rights

The doctrine of vested rights was espoused by Joseph Beale in the United States who has summarizes the essence of the principle as a right having been created by the appropriate law, the recognition of its existence should follow everywhere and thus an act valid where done cannot be called in question anywhere. Based on this doctrine the enforced is not only foreign law but the rights that have been vested under such foreign law; an act done in another State may give rise to the existence of right if the laws of that State created such right.^{xvii}

Theory of Local Law

The local law theory denotes that even if a court recognizes and enforces local rights in a foreign element case, it does not essentially apply the rule that would govern an analogous case that is of a purely domestic character. The court considers the law of the foreign country by fashioning a local right as nearly as possible upon the law of the country in which the decisive facts have occurred.^{xviii}

The Procedures for Recognition and Enforcement of Foreign Judgments in Tanzania

The recognition and enforcement of foreign judgment involves four steps: one is ascertaining the competence of the original court pronouncing a foreign judgment, two application, registration, and finally enforcement of the foreign judgment itself,^{xix} three is said to keep time limits with regard to the application which is to be filed in the High Court^{xx} and four is the actual enforcement of the foreign judgment filed, registered and qualified with all the prerequisites as stated earlier and being a final procedure, it entails the execution of the vested rights of the judgment creditor as against the judgment debtor.^{xxi}

The Recognition and Enforcement of Foreign Judgments in Tanzania and Kenya

The procedures in recognition and enforcement of foreign judgment in Tanzania and Kenya are almost the same but there is slight differences in Kenya. In Tanzania step one is on ascertainment of the competence of the original court that awarded the judgment for its enforcement in Kenya. In other words the original court should be competent to decide the matter.^{xxii} The next step is on filling of the application by the creditor in the High Court of Kenya.^{xxiii} This position is simply as that of Tanzania.^{xxiv} The last step in Kenya is that of enforcement of the foreign judgment itself, and the judgment creditor is vested with all rights he or she is seeking to enforce followed by other related issues.^{xxv}

The General Requirements and Exceptions for Recognition and Enforcement of Foreign Judgments

The recognition of a foreign judgment is followed by enforcement where a successful party may seek enforcement in the recognizing State and if it is money judgment and the debtor has assets in the recognizing State, the judgment creditor has access to all the enforcement remedies as if the case had originated in the recognizing State. It is very crucial to note that the judgment must be valid, final, and on the merits and the enforcement of foreign judgment can be excluded only when the fundamental procedural principles were violated in the rendering court.^{xxvi}

In *Tanzania National Roads Agency vs. Kundan Singh Construction Limited*^{xxvii} the High Court of Kenya declined to enforce an arbitral award delivered in Tanzania on the basis that the arbitral tribunal dealing with the contractual dispute had in reaching its decision, failed to apply Tanzanian law which was the governing law of contract. This in effect rendered the award unenforceable in Kenya on the grounds that it was against Kenya public policy.

Conclusion

The procedures for recognition and enforcement of foreign judgments in Tanzania and Kenya is somehow complex as its basis and requirements for enforcement can be found in various legal sources (conventions, treaties statutes, common law) depending on the State in which the judgment was obtained. For foreign judgment to be enforced in Tanzania or Kenya specified conditions are met, which are defined by principles of private international law. An enforcement regime that recognizes the global reach of Tanzanian and Kenyan business intercourse is desirable and joining and participating in international initiatives such as The Hague Conference on Private International Law can only be beneficial for both countries.

Recommendation

There is no uniform applicable law in recognition and enforcement of foreign judgments due to the sovereignty of each State and due to globalization and liberalization now there should be uniform rules or applicable laws as agreed by the parties through

international conventions, bilateral or multilateral treaties, unification of the internal law of the various countries upon as many legal disputes as possible.

There should be harmonization and unification of Private International Law, various international instruments and theories are discussed above in this article to resolve the conflicts to recognition and enforcement of foreign judgments in members states either to bilateral or multilateral treaties or signatory to the international instruments for adjudication of conflict in Private International Law or as agreed by the parties earlier.

All the countries should and must follow all theories, unification of private international law and bilateral plus multilateral treaties, conventions, protocols or declarations then all countries squat on world map including Tanzania and Kenya in the epoch of liberalization and globalization.

BIBLIOGRAPHY

Articles

1. HUSSEIN, Sahel & KHARTOUM, Masood (2016), *Foreign Judgment Recognition and Enforcement in Courts of Tanzania and Kenya*, LSTLR at Pg. 110-132
2. The Preface to Foreign Direct Investment in Africa: Performance and Potential, United Nations Conference on Trade and Development (1999) Publication No UNCTAD/ITE/IIT/Misc. 15.
3. A.A Olawoyin, 'Charting New Waters with Familiar Landmarks: The Changing Face of Arbitration Law and Practice in Nigeria', 26 *Journal of International Arbitration* (2009)

Instruments

1. The Reciprocal Enforcement of Foreign Judgments Act Cap 8 [R.E 2023]
2. The Foreign Judgments (Reciprocal Enforcement) Act Cap 43 [R.E 2022]
3. The Conventions on the Civil Aspects of International Child Abduction, 1980
4. The Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, 1971

Case Laws

1. Gurdal Singh v. Rajah of Faridkot, [1894] 22 Cal. 222
2. Smt. Satya v. Teja Singh, [1975] 2 SCR 1971
3. Singh v. Singh, (1936-37) KLR 82
4. Tanzania National Roads Agency v. Kundan Singh Construction Limited [2014] KLR.

Online sources

1. <https://books.google.co.in/books?isbn=3540444629>
2. <http://definitions.uslegal.com/l/local-law-theory/>



ENDNOTE

- ⁱ HUSSEIN, Sahel & KHARTOUM, Masood (2016), Foreign Judgment Recognition and Enforcement in Courts of Tanzania and Kenya, LSTLR at Pg. 110-132
- ⁱⁱ Ibid
- ⁱⁱⁱ Ibid
- ^{iv} The Preface to Foreign Direct Investment in Africa: Performance and Potential, United Nations Conference on Trade and Development (1999) Publication No UNCTAD/ITE/IIT/Misc. 15.
- ^v A.A Olawoyin, 'Charting New Waters with Familiar Landmarks: The Changing Face of Arbitration Law and Practice in Nigeria', 26 Journal of International Arbitration (2009)
- ^{vi} See Cap 8 [R.E 2023] and Cap 43 [R.E 2022]
- ^{vii} Section 10 and 11 of Cap 8 [R.E 2023]
- ^{viii} Section 9 of Cap 43 [R.E 2022]
- ^{ix} Article 14 of the Conventions on the Civil Aspects of International Child Abduction, 1980
- ^x This example can be noted among the States of the United States of America.
- ^{xi} According to section 2 of the Judicature and Application of Laws Act, [Cap. 358 R. E. 2023].
- ^{xii} See the case of Gurdayal Singh v. Rajah of Faridkot, [1894] 22 Cal. 222.
- ^{xiii} See the case of Smt. Satya v. Teja Singh, [1975] 2 SCR 1971.
- ^{xiv} Article 1 of Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, 1971
- ^{xv} scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2699&context=retrieved on October 1, 2025
- ^{xvi} Ibid
- ^{xvii} <https://books.google.co.in/books?isbn=3540444629> retrieved on October 1, 2025
- ^{xviii} <http://definitions.uslegal.com/l/local-law-theory/> retrieved on October 1, 2025
- ^{xix} Section 6(2)(a)(ii) of Cap 8 [R.E 2023]
- ^{xx} Ibid Section 4(1)
- ^{xxi} Ibid Section 4(1)(b)
- ^{xxii} Cap. 43 [R.E. 2022]
- ^{xxiii} Ibid Section 5(1)
- ^{xxiv} Ibid Section 6(1)
- ^{xxv} Section 8(1)
- ^{xxvi} See the case of Singh v. Singh, (1936-37) KLR 82 where it was held that judgment is on the merits if matter in controversy between the parties is the subject of direct adjudication.
- ^{xxvii} Tanzania National Roads Agency vs. Kundan Singh Construction Limited [2014] KLR.