THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS CAUSE NO. 0308 OF 2016

IN A MATTER OF THE RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS ACT, CAP 21
AND
IN THE MATTER OF AN ORDER OF THE HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION COMMERCIAL COURT REGISTERED AND OBTAINED IN THE COURT OF ENGLAND AND WALES UNDER CL 2015 000745 BETWEEN STIRLING CIVIL ENGINEERING LIMITED (CLAIMANT) AND GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA (DEFENDANT) DATED THURSDAY 19TH NOVEMBER 2015
AND
IN THE MATTER OF AN APPLICATION BY STIRLING CIVIL ENGINEERING LIMITED FOR REGISTRATION BY STIRLING CIVIL ENGINEERING LIMITED FOR REGISTRATION OF THE SAID ORDER IN THE HIGH COURT OF UGANDA AT KAMPALA

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

This is an application brought by Sterling Civil Engineering Limited for Registration of an Order of the High Court of Justice Queen's Bench Division Commercial Court registered and obtained in the Courts of England and Wales under CL 2015 000745 between Sterling Civil Engineering Limited (claimant) and the government of the United Republic of Tanzania (defendant) dated Thursday 19th November 2015. The application is brought exparte by Chamber Summons under **Section 2 of The Reciprocal Enforcement of Judgments Act Cap. 21 and Rule 2 and 3 SI 21-1 Section 33 of the Judicature Act and Section 98 of the Civil Procedure Act Cap. 71.**

The applicant seeks orders that;

1. Leave be granted to the applicant to have the Order issued by the High court of Justice Queen's Bench Division Commercial Court United Kingdom in claim No. CL 2015 000745 registered by this court; and

2. Costs of the application be provided for.

The application is supported by the affidavit of Gennaro Sirgiovanni the Managing Director and resident in Uganda dated 19th November 2016 and filed in this court on the same date.

The grounds of the application are stated in the Chamber Summons and the affidavit in support. In summary they are that the applicant was a success party in the Arbitration proceedings conducted at the seat of arbitration in Dar es salaam under the European Development Fund Rules (EDF Rules) between the applicant and the United Republic of Tanzania. That on 19th November 2015 under claim No. CL2015 000745 the Honorable Justice Norwell CBE Justice of High Court of Justice Queen Bench Division Commercial Court United Kingdom granted permission for the registration and enforcement of the arbitral award as the decision of the Queen's Bench Division Commercial Court, United Kingdom. The arbitral award in favour of the applicant have been registered under Miscellaneous Civil Cause No. 15 of 2010 in the Republic of Tanzania against the defendant. That pursuant of the **Reciprocal Enforcement of Judgments Act Cap. 21** an order made by Superior Court of England and Wales entitles the creditor to apply to this court at any time within 12 months after the date of the order to have the order registered in this court as an Order or Judgment of this Court. That todate the defendant remains in default of satisfying the debt under the Order. That the applicant has identified properties of the defendant within the jurisdiction of this court which the applicant will seek to enforce against. That the applicant is still within the 12 months to have the English Order registered by this court. That no appeal or application to set aside the English Order exists or is pending in any Court of England and Wales. That it is in the interest of justice that this application be allowed.

I have considered the application and the affidavit.

This application is brought under the **Reciprocal Enforcement Of Judgments Act Cap. 21.** I shall therefore consider the provisions of that Act.

Section 2 of The Reciprocal Enforcement Of Judgments Act provides for enforcement of judgments obtained in Superior Courts in the United Kingdom or Ireland. Specifically sub section 1 states:

> ***"Where a judgment has been obtained in a superior court in the United Kingdom or the Republic of Ireland, the judgment creditor may apply to the High Court, at any time within twelve months after the date of judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Uganda subject to this section, order the judgment to be registered accordingly".***

Therefore the court has discretion to decide whether or not in the circumstances of the case it is just and convenient that the judgment should be enforced in Uganda. In this case I find that it is inconvenient for and unjust to subject the government with a huge economy and the functional system of government and tax base like Tanzania to unnecessary processes of enforcement of foreign judgment in another state without proper justification for the same. The applicant has not shown this court that the Tanzanian government has refused or failed to pay the sums awarded in the arbitral award where it even had legal representation. It is also suspicious that the applicant seeks to register the UK Order instead of the Tanzanian Order. To me this appeared to be an attempt to undermine the sovereignty of the United Republic of Tanzania which would cause problems in execution and is an undesirable situation in Uganda. Therefore on that basis alone I would decline to register the Foreign Order.

I also have some reservations on the steps taken by the applicant and the procedure adopted in this application. I think the appropriate procedure should have been under the ***Arbitration and Conciliation Act Cap.4 Laws of Uganda.***

The reason for this reservation is that I have noticed that Uganda became a contracting state to the ***New York Arbitration Convention on the Recognition and Enforcement of Foreign***

Arbitral Awards on 12th February 1992. Some countries had reservations and declarations and Uganda in particular had a Declaration that:

> ***"The Republic of Uganda will only apply the Convention to Recognition and Enforcement of Awards made in the territory of another Contracting State".***

The United Kingdom of Great Britain and Northern Island became a state party on 24th September 1975 with reservations and declaration that as of 5th May 1980;

> ***"The United Kingdom will apply the Convention only to the Recognition and Enforcement of Awards made in the territory of another Contracting State. And that this Declaration is also made on behalf of Gibraltar, Hong Kong and the Isle of Man to which the Convention has been extended."***

The United Republic of Tanzania is also a Contracting State as of 13th October 1964 with reservations and declaration that;

> ***"The Government of the United Republic of Tanganyika and Zanzibar will apply a Convention in accordance with the first sentence of Article 1(3) thereof, only to the Recognition and Enforcement of Awards made in the territory of another Contracting State".***

See: http://www.newyorkconvention.org/countries accessed on 10th January 2017

The three States of Uganda, Tanzania and United Kingdom are in one way or the other affected in this case. It is true the law on enforcement of judgments from the United Kingdom and Common Wealth Countries in Uganda is found in the ***Reciprocal Enforcement of Judgments Act Cap. 21***. In this case however, it is not just an ordinary judgment but rather an Order recognizing an arbitral award. These are treated differently both domestically and internationally. That is why there is specific legislation and treaties on arbitration and enforcement of arbitration awards.

This court doesn't agree that once an arbitral award is recognized in the United Kingdom of Great Britain and Northern Ireland it then becomes a judgment made in the UK and therefore effectively ceases to be an arbitral award from Tanzania.

In case the award was made in the United Republic of Tanzania by an Arbitration Tribunal under an agreement between the applicant and the United Republic of Tanzania. Therefore it was not a judgment in common sense of the award but an arbitral award. Uganda and Tanzania being contracting parties to ***The New York Arbitration Convention on the Recognition and Enforcement of Foreign Arbitral Awards*** can therefore recognize and enforce awards from each other's territory.

Effectively the Arbitral Award which the applicant company herein seeks to enforce in Uganda is a New York convention award because under Section 39 (1) of the ***Arbitration and Conciliation Act Cap. 4.*** A "New York Convention Award" means an arbitral award made in pursuance of an arbitration agreement, in the territory of a State (other than Uganda) which is a party to the Convention On The Recognition and Enforcement on Foreign Arbitral Awards that is the New York convention adopted by the United Nations conference on International Commercial Arbitration on 10th June 1958. In this case all countries involved are parties to the convention. I therefore find the steps taken by the applicant to be quite suspect and this court suspects the applicants are avoiding or trying to circumvent something.

In this case the applicant emphasizes that the award was pursuant to the European Development Fund Rules but also states that the seat of arbitration was Dar es salaam Tanzania (see paragraph 3 of the affidavit in support of the application). Therefore it is clear that the arbitral award was a Tanzanian arbitral award considering that Section 39(2) of the ***Arbitration and Conciliation Act Cap.4*** provides that an award shall be treated as made at the seat of the arbitration regardless of where it was signed, dispatched or delivered to any of the parties.

Section 42 of the ***Arbitration And Conciliation Act Cap. 4*** provides for the conditions for enforcement of New York convention awards and requires that the New York convention award must be recognized and enforced pursuant to Section 35 which provides for recognition and enforcement of award and Section 36 for enforcement. Therefore the applicant should have brought this application under the ***Arbitration and Conciliation Act*** like any other arbitral award since this Act ratified and recognized the New York Convention. Moreover Section 43 of the

Arbitration and Conciliation Act Cap. 4 provides for enforcement of foreign awards requires that were the court is satisfied that a New York convention award is enforceable under this part. The award shall be deemed to be a decree of that court.

The provisions on arbitration that I have cited are indeed applicable in this case. However, in this application the applicant doesn't seek to register the arbitral award from Tanzania. Instead they seek to be granted permission for the registration and enforcement of the decision of the Queen's Bench Division Commercial Court which is the order of the Honorable Justice Knowles CBE Justice of the High Court of Justice, Queen's Bench Division Commercial Court United Kingdom. That order was an order allowing the applicant to enforce the arbitration award in the United Kingdom. I think this is a wrong procedure.

For the reasons in this ruling this court finds that the circumstances of this case don't warrant the grant of permission to register the order. The applicant should have sought to register the arbitration order from the seat of arbitration Tanzania instead of registering the order from the United Kingdom. There are specific clauses on arbitration which provide the procedure for Enforcement of Foreign Arbitral Award which the applicant has not followed and this court is uncomfortable allowing this application because it doesn't believe that the United Republic of Tanzania is incapable of fully satisfying and lacks resources to satisfy the award within its own territory. This court also finds that the applicant only blindly said that they have identified properties of the respondent in Uganda but did not disclose which properties those are.

This application will therefore be dismissed with no order as to costs.

I so order.

Stephen Musota
J U D G E
17.01.2017