

CHAPTER 8

THE RECIPROCAL ENFORCEMENT OF FOREIGN JUDGEMENTS ACT

[PRINCIPAL LEGISLATION]

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CHAPTER 8

THE RECIPROCAL ENFORCEMENT OF FOREIGN JUDGEMENTS ACT

An Act to make provision for the reciprocal enforcement of judgements as between Mainland Tanzania and foreign countries and for other related matters.

[5th July, 1935]

Ord. No. 12 of 1935

[R.L. Cap. 8]

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh8s1]1. Short title

This Act may be cited as the Reciprocal Enforcement of Foreign Judgements Act.

[PCh8s2]2. Interpretation

(1) In this Act, unless the context requires otherwise—

"appeal" includes any proceeding by way of discharging or setting aside a judgement or an application for a new trial or a stay of execution;

"country of the original court" means the country in which the original court is situated;

"judgement" means a judgement or order given or made by a court in any civil proceedings, or a judgement or order given or made by a court in any criminal proceedings, for the payment of a sum of money in respect of compensation or damages to an injured party;

"judgement creditor" means the person in whose favour the judgement was given and includes any person in whom the rights under the judgement have become vested by succession or assignment or otherwise;

"judgement debtor" means the person against whom the judgement was given, and includes any person against whom the judgement is enforceable under the law of the original court;

"judgement given in the superior courts" means judgement given in the High Court of Tanzania, and includes judgement given in any court on appeals against any judgement so given;

"original court" in relation to any judgement means the court by which the judgement was given;

"registering court" in relation to any judgement means the court to which an application to register the judgement is made;

"registration" means registration under Part II, and the expressions "register" and "registered" shall be construed accordingly.

(2) For the purposes of this Act, the expression "action in personam" shall not be deemed to include any matrimonial cause or any proceedings in connection with matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy or guardianship of infants.

PART II

REGISTRATION OF FOREIGN JUDGEMENTS (ss 3-9)

[PCh8s3]3. Power to extend this Part to foreign countries giving reciprocal treatment

(1) The President, if he is satisfied that, in the event of the benefits conferred by this Part being extended to judgements given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgements given in the superior courts may, by order direct—

- (a) that this Part shall extend to that foreign country; and
- (b) that such courts of that foreign country as are specified in the order shall be deemed to be superior courts of that country for the purposes of this Part.

(2) Any judgement of a superior court of a foreign country to which this Part extends, other than a judgement of such a court given on appeal from a court which is not a superior court, shall be a judgement to which this Part applies, if—

- (a) it is final and conclusive as between the parties thereto; and

(b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and

(c) it is given after the coming into operation of the order directing that this Part shall extend to that foreign country.

(3) For the purposes of this section, a judgement shall be 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.

[PCh8s4]4. Application for, and effect of, registration of foreign judgements

(1) A person, being a judgement creditor under a judgement to which this Part applies, may apply to the High Court at any time within six years after the date of the judgement or, where there have been proceedings by way of appeal against the judgement, within six years after the date of the last judgement given in those proceedings, to have the judgement registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgement to be registered:

Provided that a judgement shall not be registered if at the date of the application—

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

(2) Subject to the provisions of this Act with respect to the setting aside of registration—

(a) a registered judgement shall, for the purposes of its execution, be of the same force and effect;

(b) proceedings may be taken on a registered judgement;

(c) the sum for which a judgement is registered shall carry interest; and

(d) the registering court shall have the same control over the execution of a registered judgement,

as if the judgement had been a judgement originally given in the registering court and entered on the date of registration:

Provided that execution shall not issue on the judgement so long as, under this Part and the rules of court made thereunder, it is competent for any party to make an application to have the registration of the judgement set aside or, where such application is made, until after the application has been finally determined.

(3) Where the sum payable under a judgement which is to be registered is expressed in a currency other than the currency of the United Republic, the judgement shall be registered as if it were a judgement for such sum in the currency of the United Republic as, on the basis of the rate of exchange prevailing at the date of the judgement of the original court, is equivalent to the sum so payable.

(4) If at the date of the application for registration the judgement of the original court has been partly satisfied, the judgement shall not be registered in respect of the whole sum payable under the judgement of the original court but only in respect of the balance remaining payable at that date.

(5) If, on an application for the registration of a judgement, it appears to the registering court that the judgement is in respect of different matters and that some, but not all, of the provisions of the judgement are such that, if those provisions had been contained in separate judgements, those judgements could properly have been registered, the judgement may be registered in respect of the relevant provisions of the judgement but not in respect of any other provisions contained therein.

(6) In addition to the sum of money payable under the judgement of the original court, including any interest which by the law of the country of the original court becomes due under the judgement up to the time of registration, the judgement shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgement from the original court.

[PCh8s5]5. Power to make rules of court

(1) Subject to the provisions of this section the High Court may, with the approval of the President, make rules—

(a) with respect to the giving of security for costs by persons applying for the registration of judgements;

(b) prescribing the matters to be proved on an application for the registration of a judgement and for regulating the mode of proving those matters;

(c) for the service on the judgement debtor of notice of the registration of a judgement;

(d) prescribing the period within which an application may be made to have the registration of the judgement set aside and with respect to the extension of the period so prescribed;

(e) prescribing the method by which any question arising under this Act whether a foreign judgement can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgement under the law of the original court, is to be determined;

(f) for prescribing any matter which under this Part may be prescribed.

(2) Rules made for the purposes of this Part shall be expressed to have, and shall have, effect subject to any such provisions contained in orders made by the President under section 3 as are declared by the said orders to be necessary for giving effect to agreements made between the United Republic and foreign countries in relation to matters with respect to which there is power to make rules of court for the purposes of this Part.

[PCh8s6]6. Cases in which registered judgements must, or may, be set aside

(1) On an application in that behalf by any party against whom a registered judgement may be enforced, the registration of the judgement—

(a) shall be set aside if the registering court is satisfied—

(i) that the judgement is not a judgement to which this Part applies or was registered in contravention of the provisions of this Act; or

(ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or

(iii) that the judgement debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear; or

(iv) that the judgement was obtained by fraud; or

(v) that the enforcement of the judgement would be contrary to public policy in the country of the registering court; or

(vi) that the rights under the judgement are not vested in the person by whom the application for registration was made;

(b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had prior to the date of the judgement in the original court, been the subject of a final and conclusive judgement by a court having jurisdiction in the matter.

(2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of subsection (3), be deemed to have had jurisdiction—

(a) in case of a judgement given in an action in personam—

(i) if the judgement debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court; or

(ii) if the judgement debtor was plaintiff or counter-claimed in the proceedings in the original court; or

(iii) if the judgement debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or

(iv) if the judgement debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident, or being a body corporate had its principal place of business, in the country of that court; or

(v) if the judgement debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of a judgement given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;

(c) in the case of a judgement given in an action other than any such action as is mentioned in paragraph (a) or paragraph (b), if the jurisdiction of the original court is recognised by the law of the registering court.

(3) Notwithstanding anything in subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction—

(a) if the subject matter of the proceedings was immovable property outside the country of the original court; or

(b) except in the cases mentioned in subparagraphs (i), (ii) and (iii) of paragraph (a) and in paragraph (c) of subsection (2), if the institution of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or

(c) if the judgement debtor, being a defendant in the original proceedings, 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 submit to the jurisdiction of that court.

[PCh8s7]7. Powers of registering court on application to set aside registration

(1) If, on an application to set aside the registration of judgement the applicant satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgement, the court, if it thinks fit, may, on such terms as it may think just, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

(2) Where the registration of judgement is set aside under subsection (1), or solely for the reason that the judgement was not at the date of the 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 judgement when the

appeal has been disposed of or if and when the judgement becomes enforceable by execution in that country, as the case may be.

(3) Where the registration of a judgement is set aside solely for the reason that the judgement, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgement creditor, order judgement to be registered for the balance remaining payable at that date.

[PCh8s8]8. Foreign judgements which can be registered not to be enforceable otherwise

No proceedings for the recovery of a sum payable under a foreign judgement, being a judgement to which this Part applies, other than proceedings by way of registration of the judgement, shall be entertained by any court in the Mainland Tanzania.

[PCh8s9]9. Omitted

[Omitted: R.L. Cap. 356.]

PART III

MISCELLANEOUS AND GENERAL PROVISIONS (ss 10-12)

[PCh8s10]10. General effect of certain foreign judgements

(1) Subject to the provisions of this section, a judgement to which Part II applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any court in Mainland Tanzania as conclusive between the parties thereto in

all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.

(2) This section shall not apply in the case of any judgement—

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

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

(ii) the judgement had been wholly or partly satisfied; or

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

(b) where the judgement has not been registered, it is shown (whether it could have been registered or not) that, if it had been registered, the registration thereof would have been set aside on a application for that purpose on some ground other than one of the grounds specified in paragraph (a).

(3) [Transitional provisions.]

[PCh8s11]11. Power to make foreign judgements unenforceable in Tanzania if no reciprocity

(1) If it appears to the President that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgements given in the superior courts of Mainland Tanzania is substantially less favourable than that accorded by the courts of Mainland Tanzania to judgements of the superior courts of that country, the President may, by rules, apply this section to that country.

(2) Except in so far as the President may by order under this section otherwise direct, no proceedings shall be entertained in any court in Mainland Tanzania for the recovery of any sum alleged to be payable under a judgement given in a court of a country to which this section applies.

[PCh8s12]12. Issue of certificates of judgements obtained in Mainland Tanzania

Where a judgement under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, has been entered in the High Court against any person and the judgement creditor is desirous of enforcing the judgement in a country to which Part II applies, the court shall, on an application made by the judgement creditor and on payment of such fee as may be prescribed, issue to the judgement creditor a certified copy of the judgement together with a certificate containing such particulars with respect to the action, including the causes of action, and the rate of interest, if any, payable on the sum payable under the judgement, as may be prescribed:

Provided that where execution of a judgement is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgement until the expiry of that period.