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Practical cross-border insights into enforcement of foreign judgments

Enforcement of Foreign Judgments 2023

Eighth Edition

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Tanzania

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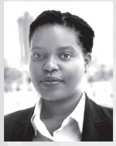

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1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

Applicable Law/Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Common Laws (International Conventions and Rules)		
Not applicable		
Domestic Legislations		
The Reciprocal Enforcement of Foreign Judgments Act Cap 8 R.E 2019.	Tanzania.	All.
The Civil Procedure Code, Cap 33 R.E 2019.	Tanzania.	Sections 3, 11 and 12.

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

In Tanzania, enforcement of foreign judgments is a procedural matter. The Civil Procedure Code Cap 33 R.E 2019, the Reciprocal Enforcement of Foreign Judgments Act Cap 8 R.E 2002 ("hereafter known as REFJA") and the rules made thereunder govern the process. Therefore, a foreign judgment will only be recognised and enforced in Tanzania if the procedures and statutory requirements are met.

2.2 What constitutes a 'judgment' capable of recognition and enforcement in your jurisdiction?

(i) The judgment must be final and conclusive.
S.3(2) of REFJA reads as follows:

> "*The judgment 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*".

(ii) The foreign judgment must not be contrary to Tanzanian public policy (S.6(1)(v) of the REFJA).
Inconsistency with any Tanzanian domestic laws, national interests, sense of justice and morality will be considered contrary to Tanzanian public policy. Therefore, foreign judgment must not conflict with Tanzanian public policy.

(iii) The foreign Court must have had jurisdiction over the defendant.
This refers to the adjudicatory competence of the Court to hear and determine the matter brought before it. It is very important to determine the jurisdiction of the Court before the recognition of the foreign judgment. The first and overriding essential for the effectiveness of the foreign judgment is that the adjudicating Court should have had jurisdiction over the defendant.

(iv) Judgment not to have been obtained by fraud.
If the judgment was based on fraud or abuse of process, recognition will be denied. If a defendant suspects fraud behind a judgment, they should take steps to investigate the suspicions and raise issue within the proceedings, as provided for under S.6(1)(iv) of the REFJA.

(v) Adherence with the principles of natural justice.
In order for a Foreign Judgment to be enforced it should adhere with the principle of natural justice as it is provided for under S.6(1) of the REFJA.

(vi) The judgment must be of a fixed sum that is not a fine, penalty or tax.
This is as provided by S.3(2)(b) of the REFJA.

2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

For Tanzanian Courts to recognise and enforce the foreign judgments, the foreign Court which has rendered the judgment must have had the jurisdiction over the matter. That means the foreign Court must have had the following:

(i) Jurisdiction over the defendant.
(ii) Cause of action, which must have arisen within the foreign Court's jurisdiction.

(iii) If the matter is contractual, the contract must have been substantially performed in the country of that Court.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

S.6(1)(a)(ii) of the REFJA provides that the court will not register a foreign judgment if the original court is found to lack jurisdiction. 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;
(b) except in the cases mentioned in subparagraphs (i), (ii) and (iii) of paragraph (a) and in paragraph of subsection (2) of the REFJA, 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 judgment 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.

Where a judgment is given *in personam*, the following are the circumstances in which the original court may be deemed to have had jurisdiction:

(i) if the judgment 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 otherwise than for the purpose of contesting the jurisdiction of that court;
(ii) if the judgment debtor was plaintiff or counter-claimed in the proceedings in the original court;
(iii) if the judgment 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;
(iv) if the judgment 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;
(v) if the judgment 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; and
(vi) if a judgment 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 situated in the country of that court.

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Yes, there is a difference.

In Tanzania recognition of a foreign judgment is governed by the Reciprocal Enforcement of Foreign Judgments Act (Cap 8 R.E 2019), while enforcement is governed by the Civil Procedure Code Cap 33 R.E 2019. Enforcement is preceded by recognition. In the event that any judgment is not recognised, then enforcement will not possible.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

The procedure is as follows:

(I) Registration of a foreign judgment.

- The Judgment holder must file an application to the High Court of Tanzania for registration.
- The application is made by way of Chamber Summons.
- The application should be done at any time within the period of six years after the date of the judgment or where there have been other proceedings by way of an appeal against the judgment, within six years after the date of the last judgment given in those proceeding, as provided under S.4(1) of the REFJA.

(II) Enforcement.

- Upon registration the judgment will be enforced as a Tanzanian judgment and capable of being executed in accordance with the Tanzanian Civil Procedure Code, Cap 33 R.E 2019.

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

A judgment debtor cannot file a challenge unless the judgment creditor has brought recognition or enforcement action in court. The respondent during the proceedings will have the right to challenge the application and may plead several grounds to counter enforcement of the foreign judgment in Tanzania against it, such as:

(1) Fraud in procuring the foreign judgment, as provided under S.6(1)(iv) of REFJA, if the judgment is found to have been obtained by fraud, the court will deny its enforcement.
(2) Infringement in the rules of natural justice, under S.6(1)(iii) of the REFJA.
(3) The foreign judgment offends public policy in Tanzania, S.6(1)(v) of the REFJA.
(4) The foreign court had no jurisdiction. The jurisdiction of the court is very important to determine before recognising the foreign judgment: under S.6(1)(a)(ii) of the REFJA, the court will look at whether the foreign court had jurisdiction to determine the matter, whereby the court will not register the judgment if the original court found to lack jurisdiction.
(5) The judgment must be final and conclusive. In order to enforce a judgment, the judgment must be final and conclusive, as provided under S.3(2) (a), S.3 of the REFJA. It was held in the case of *Mohamed Enterprises (T) Ltd v. Freudenberg & Sea Saigon Shipping Ltd*, when the High court of Tanzania refused to enforce a foreign judgment as it satisfied itself that the judgment was still on appeal.

The law provides room to set aside the foreign judgment after it has been registered as provided for under Section 6 of the REFJA.

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

The following are the statutes (laws) used in recognition and enforcement of foreign judgments Tanzania.

(i) The Reciprocal Enforcement of Foreign Judgments Act [Chapter 8 R.E. 2019] governs the recognition of foreign judgments.
(ii) The Civil Procedure Code, [Chapter 33 R.E. 2019] governs the enforcement of foreign judgments.

The Institution vested with powers to recognise and deal with the enforcement of foreign judgments is the High Court of Tanzania.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

(a) A conflicting local judgment between the parties relating to the same issue.
The Judgment must not be inconsistent with the local laws. Tanzanian courts may set aside a registered foreign judgment where the matter in dispute in a foreign proceeding has been the subject of an earlier final and conclusive judgment by a court with jurisdiction over the matter.
(b) Local proceedings pending between the parties.
This matter can be raised by the party in court, as a point of preliminary objection (P.O), i.e., *res judicata*; meaning the case has already been decided by the foreign court to its finality, and the pending case in the registering country can be challenged on that ground.

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

A party can challenge the recognition of a foreign judgment if there is a conflicting final and conclusive judgment. S.6(1) (v) of the REFJA provides that enforcement of foreign judgments shall be set aside if it is contrary to public policies or decisions in the country of the registering court.

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

The mere fact that a country applies the law of the registering country does not mean it renders a foreign judgment eligible for recognition and enforcement in that country. The requirements to render a foreign judgment are provided in the Reciprocal Enforcement of Foreign Judgments Act and in the Civil Procedure Code.

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

There are none.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

A foreign judgment can be registered any time within six years after the date of the judgment, as provided for under S.4(1) of the REFJA.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

The REFJA is silent on the issue of form. However, Order XX Rule 4 of the Civil Procedure Code specifies the form and the contents of judgments, and since the judgment shall be enforced in Tanzania, it must follow that order, which is:
(a) a concise statement of the case;
(b) the point for determination;
(c) the decision thereon; and
(d) the reasons for such decisions.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

In Tanzania, the REFJA and the Civil Procedure Code do not specify the difference between recognition and enforcement in those specific words. However, instead of the word recognition, the term used is registration. As regards to enforcement once a foreign judgment is registered as a judgment in the court of Tanzania, it is subject to enforcement as a Tanzanian court judgment pursuant to the provisions of the Civil Procedure Code Order XXI.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

S.4(1) of the REFJA provides for the application by the judgment creditor for registration of foreign judgments. The judgment creditor must file an application to the High Court of Tanzania to seek orders recognising the foreign Judgments, and an order for enforcement of the foreign judgment.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

Under Tanzanian law, the two regimes work together in the sense that after the registration of a foreign judgment under REFJA, the judgment becomes enforceable under the Civil Procedure Code. Under Sections 6(1) and 7(1) of the REFJA, it is possible to challenge the enforcement of a foreign judgment by filing an application to the High court to set aside or dismiss an application to enforce a foreign judgment.

Grounds for setting aside:
(i) The judgment not being a judgment to which the relevant Part of the Civil Procedure Code applies or was registered in contravention of the provisions of that Act.
(ii) The courts of the country of the original court not having jurisdiction in the circumstances of the case.
(iii) The judgment debtor, being the defendant in the proceedings in the original court, having not received notice of those proceedings in sufficient time to enable them to defend the proceedings, and having not appeared.

(iv) The judgment was obtained by fraud.
(v) The enforcement of the judgment would be contrary to public policy in the country of the registering court.
(vi) The rights under the judgment are not vested in the person by whom the application for registration was made.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

Enforcement depends on recognition, therefore once the judgment is registered it will be recognised as though it were made by the Tanzanian Court itself, hence Order XXI of the Civil Procedure Code is useful, and provides for modes to execute the judgment. Some of these include: attachment and sale, detention as a civil prisoner, and arrest.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

There have been no developments relevant to the recognition and enforcement of foreign judgments in the last 12 months.

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

Ensure meticulous compliance with the requirement of the REFJA and Section 11 of the Civil Procedure Code.

Acknowledgment

The authors would like to thank Coretta A. Nnko for her valuable contribution to the preparation of this chapter. Coretta A. Nnko is a legal intern, and holds a Bachelor of Laws (LL.B) Degree from the University of Dar es Salaam. She has recently completed her Post Graduate Diploma in Legal Practise from the Law School of Tanzania, pending results. She recently joined the firm to learn and obtain more experience from the Advocates. At CRB she performs various functions such as doing research on current cases, performing basic clerical duties such as taking in instructions, drafting legal documents, and doing legal research for preparation of cases. She also carries strong analytical, research and communication skills.

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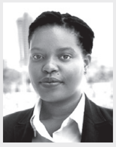

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