

Enforcement of Foreign Probate Grants in Tanzania: A Comparative Study

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Abstract: *The Reciprocal Enforcement of Foreign Judgements and the Judgments Extension Acts are familiar in Tanzania for recognition and enforcement of foreign judgements. The forma does not involve reciprocity, recognition and enforcement of Commonwealth judgements which are neither succession nor matrimonial, whereas the later extends to Mainland Tanzania decrees for debt, damage and costs reached by court in Kenya, Uganda, Malawi and Zanzibar. Notwithstanding these laws, foreign grants of probate or letters of administration with the commonwealth origin are accommodated under the Probate and Administration of Estates Act, Chapter 352, ('the PAEA'). Recognition for enforcement is through resealing. The PAEA is quiet on non-commonwealth grants. The PAEA does not establish protection of public interests, policy and some other principles of substantive laws on landed properties which may be affected by resealing or new probate petitions. Along with that, the Customary International Principles governing immovable properties civil procedures which would have protected public interests and acted as estoppels on some matters for end of justice such are given less importance or totally ignored. This article assesses the PAEA on its insufficiency in relation to enforcing foreign succession decisions.*

Keywords: Succession, PAEA, recognition, enforcement, resealing, commonwealth

1. Introduction

Conflict of Laws or Private International Law is one branch of the International Laws, another being Public International Law. It is a body of substantive law applied by a nation in private transactions involving two different nations.¹ It is concerning with legal relationship between private entities having exemplified them as family, contract and Obligation laws.² It is a branch of law dealing with the cases in which facts have connection with foreign country and thereof arising the question of jurisdiction internationally.³

While Conflict of Laws governs private relationship, the Public International Law deals with relationship between states.⁴ Conflict of Laws thus govern cases in which some relevant facts having within it a geographical connection with a foreign country rising a question of application of an appropriate foreign law to determination of the issues or exercise of the jurisdiction by a foreign court.⁵ The international civil actions are founded on consensus through the Customary International Law and agreements entered by the states.⁶ International rules are imperative in character and not subject to unilateral state modification while the sovereignty of the state left unquestionable. Laws or agreements may lack strong enforcement machinery rising weaknesses of which may be highlighted as weaknesses of international law.⁷

Aspects of the Conflict of Laws are laid on jurisdiction, choice of laws, and recognition and or enforcement of the foreign judgements. The facts may rise from normal social relationships such as marriage, tortious liabilities,

succession, and so on while others may be commercial or contracts breach in nature. However, commercial disputes are usually arbitral in nature and often, parties oust jurisdiction of courts by selecting forums of their choice in which to submit themselves in case of any dispute. The ousting of the court's jurisdiction and its outcome was discussed in the case of *East Africa Breweries Ltd v GGM Company Ltd*⁸; in which the court stated that parties decides to oust jurisdiction of the court and are free to choose laws to bind them, but once one party is aggrieved and chooses to submit himself in a certain jurisdiction, the opponent only must apply for stay of proceedings but if the other party files a defence in the contrary, that means they make their arbitral clauses unenforceable.

Of the three issues in the Conflict of Laws which are jurisdiction, choice of laws, reciprocity and or enforceability of the foreign judgments, this article's main focus is reciprocity and enforceability of the foreign succession decisions under the PAEA.

2. Background of the Conflict of Laws in Tanzania

Conflict of Laws is one of the remarkable Post Independent African states inheritances from the Colonial Masters.⁹ Briefly, Tanzania, the then Tanganyika like other colonial African countries experienced colonial masters legal system introduced to shape the colony from application of traditional or customary rules. This process was successful in some parts and failed in others the result of which mixed rules were to apply in one Colony. In Tanganyika, after becoming a British protectorate, a number of customary and Islamic rules were applied along with British rules and the common law court systems imported through India.

¹Slomanson,(2003)

²Kiestra,L.R;(2014)

³Ibid Graveson

⁴Cheng,(1982)

⁵Graveson,(1969)

⁶Wallace (1997)

⁷ibid

⁸ [2002] TLR 12 (HC)

⁹Musyoka,(2006)

After independence, colonial elements and the newly established laws were conflicting each other in some matters both internally and externally hence need for harmonisation.¹⁰ Tanganyika and other post independent African states could not withstand with multiplicity of laws which created a dilemma on choice to apply¹¹hence conferences in 1959 to 1963 discussing on how colonial legal organization could operate in post independent countries were held.¹² Of the options discussed, Tanzania opted for harmonisation and integrations of laws whereby the existed colonial legal systems remained in force as self-sufficient bodies of laws while the system continued serving as a source of law whenever the choice to apply an alternative system of law in actual cases rise.¹³The options left out by Tanzania was to reject foreign and general laws, upholding tribal legal system, to reject then an uncodified and non-developed legal system while building modern ones.¹⁴ Tanzania also rejected an option to create a new legal system emanating from unification of the components of the pre-existed system of laws,¹⁵hence application of the written, customary and received laws is pertinent.

The Judicature and Application of Laws Ordinance,¹⁶ Currently the Judicature and Application of Laws Act¹⁷ (*'the JALA'*) was enabled to apply and recognise certain laws which are general or written laws, Laws applicable in England on 22/7/1920 and the doctrine of equity.¹⁸The latter are alternatively known as received laws and both accommodated by the JALA.¹⁹Written laws mean ordinances, subsidiary registrations, decrees, applied laws and Acts of the then East African Community and the customary law.²⁰It is here from the historical legal background of Tanzania include the doctrine of equity, written, received and customary laws as existed during British rein as the Tanganyika Order in Council of 1920 revealed and as revealed under legislation provisions of Tanzanian today, International protocols, conventions and treaties. The Conflict of Laws remains no guest in Tanzania but how to go about it. However, it is considerably taken into account that foreign judgements and decisions in probate related matters have their own different ways to treat them under the laws.

From the brief history, Tanzania despite its sovereignty and globalization forces cannot ignore international legal relations and systems. It is in one way or another obliged to embrace the cause of existence of the Private International Laws; in which existence of a number of separate systems and legal units that differ from each other and the rules governing daily life are witnessed. As a country bearing obligations to erect justice to whosoever knocks doors of the

temple of justice for redress²¹it is therefore duty bound to administer justice arising from other outside its territories.

On the other hands, when some aspects of the International laws cannot cheaply pierce sovereignty of the given country, some issues are said to be mandatory in nature and need no consent from the state to perform it but obligatory to the state and non-state actors basing on the principle of *juscogens* (peremptory norms and customary international laws). *Juscogens*, in the sense that the force is peremptory in nature as they are compelling laws accepted by the international community as norms with no delegate permission. Therefore, when a court decides and is obliged that it should by the reason of the principles of Conflict of Laws resolve a given legal dispute before it by reference of the laws of another jurisdiction, it prudentially needs to do so.

3. An Overview of Reciprocity and Enforceability of the Foreign Judgement under the Laws of Tanzania

The common law plays a great role in recognition and enforcement of foreign judgements. Imported principles of natural justice such as right to be heard, limitation of time, *resjudicata*, jurisdiction and other such matters should be of no doubt otherwise the other party to whom an application or suit is against will have a good overwhelming chance to convince the court to decide against such applications due to its incompetency.²² In Tanzania, the position is considered as the legal requirement, especially on the issue of the jurisdiction and other elements. Such compliances to be observed on recognition and or enforcements of the foreign judgements are statutorily given under Section 6.²³

Recognition of arbitral award is via registration in the High Court of Tanzania. Therefore the arbitral award becomes a judgement too as per section 17(1)²⁴ but this is not an ordinary judgement to be enforced on reciprocity as it is not an ordinary judgement. It was held in an English case of *Berliner Industries Bank v Forst*²⁵among other things that the judgement/decreed capable of reciprocity is not that arising from arbitral award and therefore, a judgement or order emanating from registration of the arbitral awards in a court of law; is not an ordinary foreign judgement subjected to reciprocity laws.

In the High Court of Uganda in an application between *Stirling Civil Engineering Limited and Government of The United Republic of Tanzania*²⁶:it was also so found and held along withthe sovereignty of the court to decide or abandon to entertain any foreign application as in the above matter, the court did not recognise and enforce the judgement on the grounds *inter alia* that the judgement whose enforcement was sought for was not an ordinary judgement as it was arising from the arbitral award and registered in England

¹⁰Ally,J. (2006)

¹¹Vedasto,(2009)

¹²Ibid

¹³Ibid

¹⁴ Op citVedasto

¹⁵Ibid

¹⁶ No. 57 of 1961

¹⁷1961 R.E 2002

¹⁸Ibid

¹⁹Section 2(3)

²⁰Section 4 Cap. 1 see also Vedasto at Page 6.

²¹ Ibid Slomanson

²²Ally and Kapinga (2013)

²³Cap 8 R.E. 2002

²⁴Cap. 15, see also Kapinga and Sng'amanyo (2013)

²⁵ [1971]2 QB 463 CA

²⁶ Miscellaneous Cause No. 0308 of 2016

hence an order of the High Court of Justice, Queen's Bench Division Commercial Court registration of which was obtained in the Court of England and Wales. Generally, the judgement and competence of the jurisdiction of the court is determined in the foreign jurisdiction by rules of the Conflict of Laws.²⁷

Matters in relation to probate and administration of estates decisions; whatever in as it may be called in a granting foreign country, are treated under the PAEA. The position of the Law under Sections 95²⁸ is that any Commonwealth country granting a letter of administration in respect of the deceased's estate, sealed and deposited to the High Court and sealed with the seal of that court shall have the same force as it was granted in Tanzania. What the court does is to reseal a Probate or Letters of Administration after being satisfied that security has been given in sum amount to cover the property if any. Further, the grant is sealed when the court is satisfied with the evidence of the domicile of the deceased if the court shall deem fit to have it.²⁹

From the above, while the judgements from the foreign commonwealth countries are administered under the Reciprocal Enforcement of Foreign Judgments Act at which the court recognises, registers, and enforces them whereas, Under the Judgements Extension Act, decisions/ judgements are merely extended to Tanzania mainland for enforcement and to probate related matters under the PAEA; the court reseals the grant.

4. The Judgement Extension Act Cap 7 and Reciprocal Enforcement of Foreign Judgments Cap 8

Judgements, decrees and other enforceable decision of the court under the above laws exclude the probate grants and letters of administration. Recognition and enforcement of foreign judgements under Cap 8; is processed by the action of registration as per section 2 and 4.³⁰ The requirements are given under Section 6(1) which is that the judgment must be by the competent court, the judgement debtor must have been properly served and appeared to defend his case and other compliance with fraud free. Also, judgements must be congruent to the public policy short of which it shall be set aside. Recognised and enforcement is done by the High Court only.

The Judgement Extension Act³¹ on the other hand is limited to the decisions emanating from Zanzibar, Kenya, Malawi and Uganda. The law does not recognise to enforce but extends judgements/decrees reached on any debt, damage and costs as articulated and done by the high court or subordinate court.³² The same law directs procedures given for under the Civil Procedure Code³³ (*the CPC*) to be adhered. The CPC under Section 11 and 12 requires that for

the judgement to be extended to Tanzania (mainland) it must be final and conclusive as to any matter adjudicated between parties, pronounced by a court of competent jurisdiction and given on the merits of the case.³⁴ It must also on the face of the proceedings be founded on correct view of international law or the applicable law of Tanganyika and not based on infringement of natural justice, not fraudulently obtained and sustaining claims based on any law in force in Tanganyika.³⁵

The court upon production of the document copy purporting to be a certified copy of a foreign judgment that such judgment was pronounced by a court of competent jurisdiction, unless the contrary appears on the record shall consider it as the good document to extend.³⁶ It is not expressly given if succession issues are among extended decrees as the law provide for categorically that they are decisions reached on any debt, damage and costs in the judgement. The laws above cover instances under which only commonwealth countries are involved.

5. Recognition and Enforceability of Succession Decision in Tanzania

Enforcement is simply defined as the processes by which orders of the court may be enforced³⁷ where as recognition is referred to *inter alia* as a principle by which a foreign law apply under Private International Law as the law of the recognised state or subsidiary body set up by it.³⁸ Recognition is also referred to as a state when a court of one jurisdiction accepts a judicial decision made by a court of another foreign country and issues a judgement in substantially identical terms without hearing the substance of the original law suit³⁹ whereas enforcement is referred to as the act of compelling compliance with the law.⁴⁰ From the above, the court decision may be an order, judgement, decree, etc and for the case of a successful petition for grant of probate or letters of administration of the estate of the deceased, it is a grant.

The succession decision under Section 94⁴¹ for the purpose of foreign decision is the probate. The term probate stands in whatever decision may be called so long as it is a succession based decision according to the definition of the law in relation to foreign grant. Snijders⁴² position as to what is succession decisions does not differ from the probate meaning in relation to sealing as provided for under section 94⁴³, however, to him, a court decision is a judgement so long as it is given by the court or tribunal of a state remains the judgement whatever it may be called. Therefore for the purpose of keeping away from creating legal doubts, let the decision of the court in probate matters remain decision so as to accommodate successful and unsuccessful petition for

²⁷ Lamwai (2007)

²⁸ PAEA

²⁹ Ibid

³⁰ Ibid Cap. 8 R.E 2002

³¹ Cap7 R.E 2002

³² Ibid section 2

³³ Cap 33 R.E 2002

³⁴ Ibid section 11

³⁵ Ibid

³⁶ Ibid section 12

³⁷ Martin, (2002) .

³⁸ ibid

³⁹ Hussain, and Khartoum, (2016)

⁴⁰ Ibid

⁴¹ PAEA

⁴² ibid

⁴³ ibid

grant since they may both be subject to recognition and sealing.

The PAEA under Section 95 covers the statutory recognition enforcement of foreign succession decisions by sealing. Resealing is reserved for the High Court of Tanzania only and no any other court with such resealing jurisdiction⁴⁴ The probate or letters granted on being produced before the High Court of Tanzania are sealed with the seal of that court and as good as if they were granted in Tanzania. Grant must be from commonwealth countries as per section 94 and 95.⁴⁵The grant bearer may be required to deposit to the court prescribed security in acceptable sum, sufficient to cover the property if any for the case of letters of administration,⁴⁶ evidence as to the domicile of the deceased upon the need by the court,⁴⁷ other adequate security for payment of debts upon the application by the creditor and in accordance with the need,⁴⁸ a duplicate of any probate or letters of administration sealed with the seal of the court granting the same or a copy thereof certified as correct by or under the authority of the granting court.⁴⁹All these processes do not amount to a new action. Upon satisfying those requirements, grants are resealed.

The PAEA is silent on foreign grants from non-commonwealth members. The doubt is based on re litigation, global principle of *res judicata*, natural justice to adversaries, delaying justice and conflict of domestic laws in relation to public policies. Together with the PAEA, there is the need to clearly state whether or not the customary international principles such as *lex citus* and *juscogens* apply so as to rescue the states' public policies and interests, especially where the PAEA is not sufficient and other substantive laws on such matters' rights to petitioner and on how to effectively handle them not only on the fresh actions by those who do not belong to commonwealth states but also to all those whose rights to reseal go. This is because the content of the decision of the foreign court may be offending the public interests in which the probates are to be resealed and new actions or suits by foreign parties uncovered by the PAEA. The law should as well disclose that and give the way forward.

For the purpose of promoting interstate in integration, there is the need to avoid re litigation.⁵⁰Tanzania being bound by the common law decisions both under provisions of the JALO and the PAEA, need not to opt out some procedures of Common laws. For example, while holding the position of sovereignty and rights to decide without being not interfered by any other foreigner state, there is the principle of *juscogens* under which elites state for that the customary international law on some matters has no option. To justify this, it is stated that, In Egypt, England and other parts of the World adjudication of the disputes involving foreign merchants was of no doubt. Up to 18th Century, England's

courts of the *Steaple, Piepowder* adjudicated high sea cases to the court of Admiralty.⁵¹

In Egypt practically, special courts for foreigners where being established. Since succession comprises of the legal rights, and claims of the person to the property of the deceased either under his will if any or on his intestacy⁵² the need of likely mixed problems should not be left pending nor should the law be silent on the avenues towards resolving them. It is to be learnt from the decision in the case of *Nyali LTD v AG*⁵³ in which Lord Denning made a note that foreign laws can not apply in the land without qualification. It has many refinements and technicalities which are not suited to other folk in those far of land and that people must have laws which they understand and which they will respect; further that the qualifications of the foreign laws are to be made by judges of the land.

Whenever the law appears to have such gaps which neither the court nor the legislature has not traced its coverage, the public policy and interests are likely to be jeopardised. A lesson may be learnt under Section 19 of the Land Act.⁵⁴ Section 19 of the Land Act⁵⁵ requires that a foreigner cannot own land in Tanzania save for investment whereby the same shall go to him via the Tanzania Investment Centre or the Export Processing Zone. The High court of Tanzania in the case of *Emmanuel Marangakis as Attorney of Anastasios Anagnostou v The Administrator General*⁵⁶; interpreted the provision that it does not mean owning by succession and therefore it is one of the way a foreigner can own land.

Back to re litigation, so as to end litigations, an issue finally decided on its merits by a court having competent jurisdiction is not subject to re litigation between the same parties, while an issue before the court pending determination cannot be followed by another litigation of the same issue and parties in another court.⁵⁷

The Principles governing this are both *res judicata* and *res sabjudiceorlis alibi pendens* that is "dispute elsewhere pending". For our case, if two benches in different jurisdiction were to hear the same dispute, it is possible that they would reach inconsistent decisions especially if the deceased has had two domiciles of which one was in a common wealth country. To avoid the problem, there are two rules. *Res judicata* which provides that once a case has been determined by producing a judgment either *inter partes* depending on the subject matter, neither party can recommence actions on the same set of facts in another court. To what extent the *res judicata* applies especially on the new action on a foreigner of non-commonwealth country has no answer. This is a challenge as other matters may rise from deceased with duo domiciles with which probate court always prefer to prove in addition to the

⁴⁴ Ibid section 4

⁴⁵ ibid

⁴⁶ Ibid Section 96

⁴⁷ ibid

⁴⁸ Ibid Section 97

⁴⁹ Ibid Section 98

⁵⁰ Ibid Hussain and Khartoum

⁵¹ Ibid Oguno et al

⁵² Graveson (1974)

⁵³ [1955]1 All ER 653

⁵⁴ Chapter 113 R.E,2013

⁵⁵ As amended by Section 28 of the Written Laws (Miscellaneous Amendments) No. 2 of 2017

⁵⁶ Civil Case number 1 of 2011 (HC) Dar Es Salaam

⁵⁷ Ibid; Lamwai

courts' customs in a given state.⁵⁸ Since therefore, justice is potential to every person, there is the need for the PAEA or court of law to clearly point on the issue of *res judicata*.

6. Practice under some of the Commonwealth Countries

On foreign judgement generally, the court can recognise but may not enforce each foreign judgement recognised as the need maybe merely recognition.⁵⁹ The judgement need to be founded on the doctrine of comity.⁶⁰ Comity means moral obligation.⁶¹ The aspects of jurisdiction, selection of appropriate law to apply and Recognition and Enforcement as the aspect of Conflict of Laws⁶² apply. In the United Kingdom, the Civil Jurisdiction and Judgement Act⁶³ apply on enforcement of courts' decisions within the European Community and EFTA countries while the Administration of the Justice Act⁶⁴ and Foreign Judgement (Reciprocal Enforcement) Act⁶⁵ apply for the judgements from the Commonwealth Countries and handful of others.⁶⁶ When Judgements are not on Reciprocal Enforcement treaty with the relevant state nor on laws specifically provided for, the execution creditor sues on his judgement within the jurisdiction action; and this judgement must not have been entered against certain conditions. This action is known as Enforcement by Action.⁶⁷ The process is that the judgement creditor issues proceedings in the jurisdiction and hence applies for summary judgement on the foreign judgement. In England and Wales, incoming and outgoing judgements enforcement is governed by the Civil Procedure rules of 2002.⁶⁸

On matters of succession (Probate and Administration of Estate) in England and Scotland, a general rule is that, a person is not entitled to uplift and intromit with or take any administrative action in the estate of any deceased person who has left assets in Scotland until he has obtained confirmation.⁶⁹ Before the executor is conferred with such authority on the deceased's estate, he must complete a title in accordance with the law of the place; if on immovable property, where property is situated using the principle of *lex loci reicitae* or *lex situs*.

On the other hand, if letters of administration have been granted in any of the British commonwealth countries, application for confirmation is not necessary instead; the

probate or letters of administration may be resealed in Edinburgh and get used elsewhere in the Europe.⁷⁰ Resealing of the said probate in Scotland is competent under the Colonial Probate Act and the Colonial Probates (Protected States and mandated territories) Act.⁷¹ All questions arising in the process are governed by the laws of the deceased's last place of domicile that is *lex situs*,⁷² while as seen above, the decision which do not qualify under treaties and laws of the jurisdiction, an action for ex parte judgement is instituted.

Along with the above, in knocking doors of the temple of justice for redress, principally, there should not exist more than one competing foreign judgement pronounced by the court of competent jurisdiction which was final and not open for impeachment, the rule against *res judicata* applies and the former suit is to be upheld.⁷³

7. Enforcement of Foreign Grant in Kenya

Resealing of Grant of Probate and Letters of Administration is one of the grants tenable in Kenya others being grant of probate, grant of letters of Administration with a will annexed, grant of probate or oral will, grant of letters of administration intestate and limited grant *ad colligenda bona defunct* and grants for special purpose or limited grants.⁷⁴ Both Law of succession Act⁷⁵ and the Law of Domicile Act⁷⁶ governs the foreign grants.⁷⁷

Grant obtained in Kenya only enables personal representatives to deal with the properties in Kenya.⁷⁸ A foreign grant in Kenya is enforceable by resealing.⁷⁹ Resealing is effected by the High Court of Kenya in Mombasa or Nairobi only.⁸⁰ For the real property, The Law of Succession Act provide for applicable laws to be laws of Kenya.⁸¹ Therefore, the law of domicile of the deceased for the purpose of succession is very essential in determining the issues of succession and the domicile⁸² look at the time of death as it was so stated by the Court in *Re Estate of Naftal*.⁸³ The decision as to domicile is ascertained where there is proof of domicile elsewhere immediately after the death of the person who was a resident of Kenya.⁸⁴ The nature of the law and literatures reveal that the recognition and enforcement of foreign grant in Kenya is to the extent of the immovable properties.

The granting foreign court must have the similar effect as the High Court of Kenya as if it was granted in

⁵⁸ William (1964)

⁵⁹ Collier (2001)

⁶⁰ Morris, (1984)

⁶¹ The doctrine is base on moral philosophy in which philosophy or deontological ethics is the normative ethical theory that the morality of an action should be based on whether that action itself is right or wrong under a series of rules rather than based on the consequences of the action.

⁶² Ibid Collier J.G

⁶³ 1982

⁶⁴ 1920

⁶⁵ 1933

⁶⁶ Black and Sandbrook (1997)

⁶⁷ ibid

⁶⁸ Sandbrook, (2007)

⁶⁹ Crawford, (1998)

⁷⁰ ibid

⁷¹ Acts of 1892 and 1927 consecutively

⁷² Ibid Crawford, See also Morris, (1984)

⁷³ Morris and Dicey (1997)

⁷⁴ Lady Justice Ang'awa (2005)

⁷⁵ Chapter 160

⁷⁶ Chapter 37

⁷⁷ Musyoka, W.M (2008)

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ Section 77 (1) of the Law of Succession Act of Kenya

⁸¹ Section 4(1)(a)

⁸² Op Cit Musyoka

⁸³ [2002]2 KLR 684

⁸⁴ Musyoka, W.M (2010)

Kenya.⁸⁵ Grants may as well be issued by the authority designated to do so by the minister in Kenya, via a gazetted notice.⁸⁶ Once that is done then a foreign grant is enforceable to the extent of the authority in the notice which may also enlarge an area of reciprocity of foreign grants.

The Court in the Case of *Re Naftat (deceased)*⁸⁷ stated among other things that the intention to reseal foreign probates is to eliminate frauds and conflicts. It is as well noted that Resealing of the foreign grant in Kenya is for commonwealth countries and non-commonwealth members but designated by the Minister by notice to deposit grants for resealing.⁸⁸ It is in the wishes of the court that it may require the grant holder to furnish with it evidence as to the domicile of the deceased and adequate securities upon application by the creditor while reserving the position of the law that no the process cannot be challenged against an administrator.⁸⁹

8. Enforcement of Foreign Grant in Uganda

There are two national statutory laws that govern inheritance matters in Uganda.⁹⁰ They are the Constitution of Uganda⁹¹ and the Succession Act⁹² Section 181⁹³ relate to administration with copy annexed of authenticated copy of will proved outside Uganda. According to the provision, once a will is proved and deposited in a court of competent jurisdiction, situated beyond the restrictions of Uganda, whether in the Commonwealth or in any other foreign country and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

The language used in the law as for the issue of foreign grant appears to be friendly and covering any foreigner regardless his origin if commonwealth or not. If a man dies leaving movable property in Uganda, in the absence of proof of any domicile elsewhere, the law of Uganda regulates succession to the property.⁹⁴ Upon enforcing foreign grants, no suit can stand against the administrator.⁹⁵ For example in the Case of *Keshavlal Bhoja v Tajalal Bhoja*⁹⁶ a resident of Uganda had sued an administrator of the estate of their deceased father. The grants were done in Kenya hence; the court held that the suit was not maintainable in Uganda.

This is the general rule that obstructs any action to be brought against an administrator of the deceased's estate in his official capacity for any grant that was obtained in the foreign jurisdiction.⁹⁷ This general rule's position stands similar in the decision in National *Bank of India Ltd v The*

Administrator General of Zanzibar.⁹⁸ In this action, the deceased had an action in filed in Kenya for properties situated in Zanzibar and probate grants granted in Zanzibar. The court of Kenya stated categorically that it had no jurisdiction as to that action only that it was supposed to be institution in a granting jurisdiction.

Notwithstanding and without prejudice to the law of succession in Uganda, the judgement creditor may enforce his rights in relation to probate under the foreign judgements (Reciprocal Enforcement) Act.⁹⁹ Generally, the laws in Uganda in relation to foreign grants are straight forward and favourable.

9. Conclusion

Resealing of the foreign probate grants in Tanzania does not involve non commonwealth foreigners and thus no likelihood contravene Public Policy and other statutory requirements as governing landed properties. The principles of *Res judicata* or *res subjudice* do not apply to those who are not covered by the PAEA. This legal lacunae makes the internal conflict of laws and principles on immovable properties. For example where a foreigner is restricted to access land under land act; this restriction is not extended to inheritance as it was reached by the High Court in the case of *Emmanuel Marangakis as Attorney of Anastasios Anagnostou versus the Administrator General*.¹⁰⁰ It is the case in which the court was not handcuffed by the public interests and the law of the state not intentionally but the nature of the laws more especially the right of beneficiaries under the PAEA and the requirements of Sections 68,71 and 140 of the Land Registration Act.¹⁰¹

Meanwhile, it is essential to apply some rules of Conflict of Laws when it comes to foreign probate as the custom internationally stands on immovable properties; and learnt in the matrimonial decision of in a Zanzibar case of *Gharib Abdallah Juma v Kay Mlinga*¹⁰² in which the court after ensuring admissibility of the foreign matrimonial decision between parties as reached in Denmark, the High court during enforcement of the matrimonial division order held that a Zanzibari can own land therefore even if the rights to division matrimonial assets accrued to the appellant, the only available means is to dispose it off. It is by this way laws and policy of Zanzibar was protected by application of customary international law of immovable properties through *lex loci situs*.

Van Loon¹⁰³ finds that Conflict of Laws system has complications and frustrations to the people crossing borders consequently may stand as hindrance to access or delay justice. However, since the environments as to the rise of such circumstances above seen are inevitable, there is the need to establish handsome rules to handle foreign probates as seen in some of the common law countries the duty of

⁸⁵ Felix Otiso (deceased), High Court of Kenya, Nairobi. Civil Case No. 2715 of 1996

⁸⁶ Op cit Musyoka

⁸⁷ Op cit

⁸⁸ Op cit Musyoka (2010)

⁸⁹ Ibid

⁹⁰ Asiimwe (2016)

⁹¹ 1995

⁹² (Amendment) Decree No.22/1972

⁹³ Chapter 162

⁹⁴ Section 18 of Succession Act Chapter 162

⁹⁵ *Keshavlal Bhoja v Tejalal Bhoja* [1967] EA 217

⁹⁶ Ibid

⁹⁷ Op cit Musyoka (2010)

⁹⁸ [1924-1926] KLR; in Musyoka (2010)

⁹⁹ Chapter 9

¹⁰⁰ Op cit

¹⁰¹ Cap 334.

¹⁰² Civil Appeal Number 10 of 2001 (CA)

¹⁰³ Van Loon, (2007)

which is in the ambit of the legislature and the Courts ready develop laws. Basing on the above findings, friendly ways to tackle private international issues so as to maintain and develop cross border relationships basing on international principles is crucial.¹⁰⁴

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