



**Njenga v Kahuho (Commercial Arbitration Cause E010 of 2023)
[2024] KEHC 10578 (KLR) (Commercial and Tax) (22 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10578 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL ARBITRATION CAUSE E010 OF 2023**

**A MABEYA, J
AUGUST 22, 2024**

BETWEEN

WINNIE WANJIRU NJENGA APPLICANT

AND

JANE WAITHERA KAHUHO RESPONDENT

RULING

1. By a Motion on notice dated 31/1/2024 brought under Order 10 Rule 11, Order 51 Rule 1 of the *Civil Procedure Rules* sections 1A, 1B and 3A of the *Civil Procedure Act*. The applicant has sought that the judgment entered herein be set aside and a defence be allowed out of time. The grounds thereof were that the judgment was made ex-parte without the applicant's knowledge.
2. The same was supported by affidavit of Jane Waithera Kahuho sworn on 21/1/2024. She swore that judgment was entered against her on 17/7/2023 in default of appearance and a decree issued on 8/8/2023. That she has been advised by her advocate that the judgment is unlawful as the same was endorsed without her knowledge as she had not been served with any summons.
3. She further stated that she was making the application in good faith. That she has a good defence as there were triable issues on breach of contract and damages. She therefore urged that she be granted time to lodge her defence.
4. The motion was opposed vide a replying affidavit sworn by Winnie Wanjiru Njenga on 20/3/2024. She deposed that; the matter arises out of an Award by a tribunal made on 4/2/2022. That the Court adopted the same on 8/8/2023 as a decree of this Court.



5. That the applicant should have applied to set aside the award under section 35 of the [Arbitration Act](#). That this was not a conventional suit to which a defence can be filed. That is the premises the application was on abuse of the Court process and should be dismissed.
6. The parties filed their respective submissions by the respondent dated 25/4/2024 and the applicants which were undated. I have carefully considered the same.
7. As quite correctly submitted by the respondent, this Court's jurisdiction is limited in matters arbitration. Section 10 of the [Arbitration Act](#) is clear on that. What was before the Court vide the summons dated 14/11/2022 was an application under section 36 of the [Arbitration Act](#) ("The Act"). It sought the recognition and enforcement of the award dated 4/11/2022 as an order of the Court.
8. At the proceedings of 20/3/2023, the Court found that that application had been served upon the applicant. There is an affidavit of service on record of David Onsare sworn on 20/3/2023. Service had been effected on the applicant on 14/3/2023. The application therefore proceeded unopposed.
9. In view of the foregoing, the recognition proceedings were properly prosecuted. There was nothing illegal about them. The applicant has not challenged the said affidavit of service. She never sought to cross-examine the deponent. Service was therefore proper and the proceedings arising therefrom cannot be assailed.
10. In any event, there is no evidence that within 90 days of the Award of 4/11/2022 the applicant ever sought to challenge the said Award. In the absence of an application under section 35 of the Act, setting aside the order recognizing the Award would be an exercise in futility.
11. Accordingly, I find the application to be fatally defective, lacking in merit and dismiss the same with costs.
12. It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF AUGUST, 2024.

A. MABEYA, FCI Arb, EBS

JUDGE

