



**Ruffoo v Ravine Park Limited (Arbitration Cause E055 of 2023)
[2024] KEHC 10238 (KLR) (Commercial & Admiralty) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10238 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND ADMIRALTY
ARBITRATION CAUSE E055 OF 2023**

**PM MULWA, J
AUGUST 15, 2024**

BETWEEN

GAETANO RUFFOO APPLICANT

AND

RAVINE PARK LIMITED RESPONDENT

RULING

1. This ruling determines the applicant's Chamber Summons application dated 6th July 2023 brought under Section 36(1) of the *Arbitration Act*, No. 4 of 1995 and Rules 4(2) and 6 of the *Arbitration Rules*, 1997. The applicant prays that leave be granted to recognize and enforce the Arbitral Award published on 28th February 2022 as amended by the additional award of 2nd April 2022 and that the costs of the application be paid by the respondent. It was predicated on the grounds that, pursuant to the arbitral award of 28th February 2022 as amended on 2nd April 2022 the statutory 3-month period has lapsed without the respondent applying to set aside the arbitral award. The applicant contends that the respondent has refused, failed, and or neglected to settle the sums awarded.
2. The application was supported by the affidavit of the applicant herein Gaetano Ruffo sworn on 6th July, 2023. He deposed that he had invoked clause 225(c) of the award dated 24th June 2021 and requested the arbitrator to address the issue of costs following the failure by the parties to agree on the same.
3. Opposing the application Faraaz Tejani the Director of the respondent swore a replying affidavit sworn on 18th September 2023. He argues that the additional award applies only in cases where a party upon notice requests the arbitral tribunal to correct the computation errors, clerical errors and typographical errors and costs of the counterclaim do not fall in the purview of publishing an additional award. He contends that invoking Section 225 was done after the expiry of 60 days of delivering the award and therefore the award is time-barred and urged the court to dismiss the application.



4. On 13th March 2024 the respondent filed a Notice of Preliminary Objection on the grounds that:
 - i. The application is incurably defective and incompetent having been brought in breach of express mandatory provisions of the law
 - ii. The orders sought cannot be granted given the express and mandatory provisions of Section 36(3) of the *Arbitration Act*, 1995.
5. Parties filed submissions in respect of both the application and the notice of preliminary objection.
6. I have considered the application, the affidavit in support and against, the preliminary objection, submissions, and further submissions by the parties in support of their respective arguments. The issues for determination are:
 - i. Whether the final award of 22nd April 2022 is time-barred
 - ii. Whether this court should recognize and enforce the arbitral award.
7. The bone of contention is that the arbitrator lacked the jurisdiction to amend the arbitral award and award costs of the counterclaim to the applicant after publishing the final award. To the respondent the award of 22nd April 2022, offends the provision of Section 34 (1) and (4) of the *Arbitration Act*.
8. Section 34 of the *Act* which provides:
 1. Within 30 days after receipt of the arbitral award, unless a different period of time has been agreed upon by the parties—
 - a. a party may, upon notice in writing to the other party, request the arbitral tribunal to correct in the arbitral award any computation errors, any clerical or typographical errors or any other errors of a similar nature; and
 - b. a party may, upon notice in writing to the other party, request the arbitral tribunal to clarify or remove any ambiguity concerning specific point or part of the arbitral award.
 2. If the tribunal considers a request made under subsection (1) to be justified it shall, after giving the other party 14 days to comment, make the correction or furnish the clarification within 30 days whether the comments have been received or not, and the correction or clarification shall be deemed to be part of the award.
 3. The arbitral tribunal may correct any error of the type referred to in subsection (1)(a) on its own initiative within 30 days after the date of the arbitral award.
 4. Unless otherwise agreed by the parties, a party may upon notice in writing to the other party, within 30 days after receipt of the arbitral award, request the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
 5. If the arbitral tribunal considers the request made under subsection (4) to be justified, it shall make the additional arbitral award within 60 days.
 6. The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under subsection (2) or (5).
 7. Section 32 shall apply to a correction or an interpretation of the arbitral award or to an additional arbitral award made.



9. From the above provision the tribunal through its own motion or by application of a party can amend an award akin to clerical errors or typographical errors as well as ambiguous awards. The provision provides that the award be issued within 30 days with the arbitrator having the discretion to extend the time as per Clause 34 (6) of the Act.
10. In the instant case the clarification sought was whether the applicant was entitled to the costs of the counter-claim, following the dismissal of the counter-claim as elucidated in paragraph 206 of the award.
11. A perusal of the record reveals the arbitrator made the final award on 24th June 2021 and left it to the parties to determine the quantum of costs. In case the parties failed to do so they were at liberty to invoke clause 225(c) of the award and would approach the arbitrator to assess the costs payable. On 9th September 2021 the applicant invoked clause 225(c) and urged the arbitrator to assess the costs which the arbitrator did by way of the final award of 28th February 2022. Upon receipt of the award on 28th February 2022, the applicant wrote to the Arbitrator by the letter dated 18th March 2022 seeking clarification of clause 21 of the award. It is this clarification that brought about the final award of 22nd April 2022.
12. In an email dated 14th April 2022, the Arbitrator informed the parties that he was unable to issue the award within the allotted 30 days and he extended the deadline for delivery to 22nd April 2022. This was in line with the provisions of Section 34(6) of the Arbitration Act which gives an Arbitrator such an allowance.
13. No doubt, the arbitral tribunal was vested with the jurisdiction to amend the award to include the additional costs of the counterclaim. In the circumstances, therefore, I find the award of 22nd April 2022 is not time-barred.
14. I now turn to the next issue as to whether the award ought to be recognized and/or enforced. The applicant argued that the respondent failed to raise grounds for setting aside an arbitral award as required by Section 37(1) of the Arbitration Act. He also contends additional award on costs were in respect to the errors stipulated under Section 34(1) and (4) of the Act and which were related to the counterclaim.
15. The statutory provisions that govern the enforcement of the Award are Section 36 of the Arbitration Act provides that:
 1. Domestic arbitral award, shall be recognized as binding and, upon application in writing to the High Court, shall be enforced subject to this section and section 37.
 2. ...
 3. Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement must furnish—
 - a. the original arbitral award or a duly certified copy of it; and
 - b. the original arbitration agreement or a duly certified copy of it.
 4. ...
 5. ...
16. On the other hand, Section 37 thereof provides for grounds upon which the High Court may decline to recognize and/or enforce an arbitral award. It provides as follows:



37. The recognition or enforcement of an arbitral award, irrespective of the state in which it was made, may be refused only—
- a. At the request of the party against whom it is invoked, if that party furnishes the High Court proof that;
 - i. a party to the arbitration agreement was under some incapacity; or
 - ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made;
 - iii. The party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - iv. The arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration, or it contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decision on matters referred to arbitration can be separated from those not so referred, that part of the arbitral award which contains decisions on matters referred to arbitration may be recognized and enforced; or
 - v. The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement by the parties, was not in accordance with the law of the state where the arbitration took place; or
 - vi. The arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which or under the law of which, that arbitral award was made; or
 - vii. The making of the arbitral awards was induced or affected by fraud, bribery, corruption or undue influence
 - b. If the High Court finds that;
 - i. The subject matter of the dispute is not capable of settlement by arbitration under the Laws of Kenya, or
 - ii. The recognition or enforcement of the arbitral award would be contrary to Kenya's public policy.
17. I have perused the record and the applicant has attached the arbitral awards dated 28th February 2022 and 22nd April 2022 whereas the respondent availed a copy of the Award dated 24th June 2021 and copies of the three agreements entered upon between the parties, which agreements were the subject of the dispute at the arbitral tribunal and had provided that in case of any dispute, the matter ought to be referred to arbitration according to clause 22 thereof.
18. It is true that the applicant has not adduced the agreements, but since the respondent availed the same, they formed part of the record and the Court has had the benefit of looking at them. I am satisfied that the applicant has meet the threshold for enforcement of an award.



19. It is trite law that where parties agree to submit to arbitration, it follows that any arbitral award is considered final and binding upon them. Under Section 32(A) of the Arbitration Act, an arbitral award is final and binding upon the parties unless a party shows that the award is impacted by one or more of the specified grounds for rejection listed under Section 37(1) of the Act in the Arbitration.
20. According to Rules 6 and 7 of the Arbitration Rules 1997, a party may apply ex-parte by summons for permission to enforce the award as a decree if no application to set aside the award has been made in line with Section 35 of the Act.
21. From the record, the respondent opposes the recognition and enforcement of the award on the basis that the award is time-barred for failing to be published within 60 days of the request. Having found that the award is not time-barred and in the absence of any reasons envisaged under Section 37 of the Arbitration Act I allow the chamber summons application dated 6th July 2023.
22. From the foregoing, I grant the following orders:
 - i. Leave is hereby granted to recognize and enforce the Arbitral Award published on 28th February 2022 as amended by the additional award of 2nd April 2022.
 - ii. The applicant will have the costs of these proceedings.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF AUGUST 2024.

P. MULWA

JUDGE

In the presence of:

N/A for Applicant

Ms Muutu h/b for Mr. Sarvia for Respondent

Court Assistant: Lilian

