



**Amitruck Limited v Blitz Logistics Limited (Commercial Arbitration Cause E008 of 2023) [2023] KEHC 18240 (KLR) (Commercial and Tax) (26 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18240 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL ARBITRATION CAUSE E008 OF 2023**

**DAS MAJANJA, J**

**MAY 26, 2023**

**BETWEEN**

**AMITRUCK LIMITED ..... APPLICANT**

**AND**

**BLITZ LOGISTICS LIMITED ..... RESPONDENT**

**RULING**

1. On October 31, 2022, the Arbitral Tribunal published a Consent Award (“the Award”) awarding the applicant Kshs. 4,924,896.00 and directing that the said amount be paid in monthly installments of Kshs. 400,000.00 commencing on November 5, 2022 until payment in full. The amount would attract interest at 12% per annum in the event of default and each party was directed to bear its own costs.
2. The Applicant has moved the court under section 36 of the *Arbitration Act*, 1995 for recognition, adoption and enforcement of the Award. The application is supported by the affidavit of its officer, Boniface Warui, sworn on 19<sup>th</sup> January 2023. Once the application was served, it precipitated the filing of an application by the Respondent made under section 35(2)(a)(vi) of the *Arbitration Act* seeking to set aside the Award. The application is supported by the affidavit of its officer, Boniface Kioko, sworn on January 24, 2023 and opposed by the Applicant through the replying affidavit of Boniface Warui sworn on March 15, 2023. The court ordered that both applications be heard together and in that regard the parties filed written submissions.
3. The Respondent has invoked the court’s jurisdiction to set aside an arbitral award under section 35(2)(a)(v) of the *Arbitration Act* which provides as follows:
  35. Application for setting aside arbitral award
    - (2) An arbitral award may be set aside by the High Court only if—



(a) the party making the application furnishes proof—

(vi) the making of the award was induced or affected by fraud, bribery, undue influence or corruption;

4. The respondent contends that the Award was obtained by fraud, bribery, undue influence or corruption. It states that it never instructed or gave the firm of Odindo and Company Advocates (“Odindo and Company”) authority to sign the consent that resulted in the Award. That it only learnt of the consent when it was served with the application to enforce the Award as the entire transactions was marred by secrecy. As a result, it claims that the proceeding before the Arbitral Tribunal were unlawful and or illegal and allowing the Award to stand would amount to a grave injustice as it will be condemned unheard.
5. The Applicant opposes the application and denies the allegations of fraud, bribery, undue influence and corruption. It has set out to chronicle the events leading to the Award. It states that prior to the arbitral proceedings, its advocates sent to the respondent a demand letter dated April 21, 2022. Upon receiving the demand, the advocates received an email dated 26<sup>th</sup> April 2022 from the Respondent’s accountant asking them to halt any action as the matter would be resolved amicably. As no payment was received, the Applicant’s advocates invited the Respondent, by the letter dated May 11, 2022, to agree on an arbitrator. The Applicant then moved the President of the Law Society of Kenya to appoint an arbitrator which he did by the letter dated July 15, 2022. The Arbitrator accepted the appointment by the letter dated July 21, 2022.
6. The Arbitrator invited the parties for a preliminary meeting on September 15, 2022. The respondent, through the firm of Odindo and Company confirmed by an email dated September 2, 2022, that it had been instructed by the Respondent and was available. Odindo and Company informed the applicant’s advocate through an email dated September 20, 2022 that it had express instructions from the Respondent to resolve the matter by paying monthly instalments of Kshs. 300,000.00 until payment in full. Thereafter the parties engaged by emails dated September 21, 2022 and by an email dated September 26, 2022 and Odindo and Company confirmed that following a meeting with its client, it had instructions to settle the matter by monthly instalments of Kshs. 400,000.00. The parties then notified the Arbitrator that they had reached a consent by an email dated September 28, 2022. The Arbitrator obliged by setting the matter for mention on October 11, 2022 and requesting the parties to furnish a signed consent. Thereafter, a consent dated October 21, 2022 was duly signed by the parties and filed with the Arbitral Tribunal and adopted as the Award in accordance with section 31 of the *Arbitration Act*.
7. The applicant avers that prior to commencement of the collection process, the respondent had by an email dated December 29, 2021 admitted issuing bouncing cheques for which the respondent’s director apologised and pleaded for time to clear outstanding invoices.
8. The respondent has the burden of proving that the making of the award was induced or affected by fraud, bribery, undue influence or corruption. This means that the respondent ought to furnish the court not only with facts but also evidence to support the allegations that would convince the court to set aside the Award. In this case, the respondent’s deposition in support of the application is threadbare and makes bare allegations. On the other hand, the applicant has, in its deposition, given a full chronology of events leading to the publication of the Award. What took place does not disclose any hint or wrongdoing either on the part of the Arbitrator or the counsel for the applicant. This facts, as narrated by the applicant, are not even controverted.



9. Further, claims of fraud, bribery, undue influence or corruption are not to be taken lightly; they are serious matters which ought to be pleaded with sufficient particularity. Apart from the vague and general allegations, I find and hold that applicant has not furnished any proof that Award was coloured by fraud, bribery, undue influence or corruption either on the part of the Arbitrator or the applicant's counsel on record.
10. It is understandable that the respondent did not controvert the applicant's narration of events because, as I understand, its case is not that Odindo and Company were not its advocates, it is that it never instructed the firm of Odindo and Company to record the consent settling the matter. It complains that the advocates did not have the express authority to record the consent settling the matter. The applicant correctly points out that there is no requirement in law that a duly instructed advocate must have written authority to enter in the consent. An advocate instructed by a party has implied authority to compromise and settle an action. The advocate, like any agent, has ostensible authority to bind the principal and unless it is shown that there is fraud and the like or that the third party had notice of the limitation of the authority, the court cannot intervene to set aside the consent.
11. This general principle has found judicial imprimatur in several cases including *Kenya Commercial Bank Limited v Benjob Amalgamated Limited and another* NRB CA Civil Appeal No. 276 of 1997 [1998] eKLR where the Court of Appeal cited with approval the following passage in *The Supreme Court Practice 1976* (Vol.2) p. 269 para. 2013 regarding the authority of a solicitor to compromise a suit:
 

Authority of Solicitor- a solicitor has a general authority to compromise on behalf of his client, if he acts bona fide and not contrary to express negative direction; and it would seem that a solicitor acting as agent for the principal solicitor has the same power (*Re Newen*, [1903] 1 Ch pp 817,818; *Little v Spreadbury*, [1910]2 KB 658). No limitation of the implied authority avails the client as against the other side unless such limitation has been brought to their notice- see *Welsh v Roe* [1918 - (9)] All ER Rep 620.
12. The respondent in this case has not shown that the applicant had any notice of any limitation on his authority to compromise the suit. The respondent has cited *Kenya Anti-Corruption Commission v John Faustin Kinyua and others; Sulmac Microfinance Bank Limited (Objector); Sammy Michugu Njenga (Interested Party)* [2020] eKLR as authority that the court may set aside the consent where there is absence of instructions from the client. While the case is at odds with the general and established principle, it is easily distinguishable because in that case the consent appeared to be and the court found that the position taken by the advocates was at odds with the position the client had taken in the suit. In this case, there is uncontroverted evidence that the Respondent had prior to the arbitral proceedings, admitted the debt and had even offered to resolve it amicably.
13. Having considered all the facts, I am not satisfied that the respondent has discharged the burden of showing that the making of the award was induced or affected by fraud, bribery, undue influence or corruption. The application to set aside is therefore dismissed.
14. Turning to the application for recognition and enforcement of the Award under section 36 of the *Arbitration Act*, I hold that the Applicant has satisfied the formal requirements by furnishing the original award and the agreement containing the arbitration clause. The Respondent has not proved any of the grounds that would entitle this court to refuse to recognise the Award under section 37 of the *Arbitration Act*. Further, since I have dismissed the application to set aside the Award, there is no impediment in granting the application.
15. I therefore make the following dispositive orders:



- a. The respondent's application dated January 25, 2023 is dismissed.
- b. The applicant's application dated January 19, 2023 is allowed on terms that the Arbitral Award dated October 31, 2022 be and is hereby recognized as a judgment of this court and leave is granted to the applicant to enforce it as a decree.
- c. The respondent shall bear the costs of the both applications which are assessed at Kshs. 60,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF MAY 2023.**

**D. S. MAJANJA**

**JUDGE**

Court Assistant: Mr M. Onyango

Mr Otieno instructed by COL Advocates LLP for the Applicant.

Mr Nyongesa instructed by Sebastian and Nyongesa Advocates for the Respondent.

