



REPUBLIC OF KENYA



**Wealthsmith Limited & another v Kithome & 11 others; Munyu
(Interested Party) (Miscellaneous Application E065 of 2022)
[2023] KEHC 20759 (KLR) (Commercial and Tax) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E065 OF 2022**

DAS MAJANJA, J

JULY 26, 2023

BETWEEN

WEALTHSMITH LIMITED 1ST APPLICANT

BARLETTA HOLDINGS LIMITED 2ND APPLICANT

AND

BEATRICE NJAMBI MAHIANYU 1ST RESPONDENT

CASPER NZIOKA KITHOME 2ND RESPONDENT

BENSON KINYUA NGURE 3RD RESPONDENT

PAUL KIRUNJA RIUNGU 4TH RESPONDENT

CAROL NYAWIRA SHIKANGA 5TH RESPONDENT

DANIEL KIMANI NDIBA 6TH RESPONDENT

EVANGELINE RICHU 7TH RESPONDENT

JOYCE NANDAKO WANYONYI 8TH RESPONDENT

MESHACK K MWANIA & CLAIRE WAITHIKI KANYIRI ... 9TH RESPONDENT

MICHAEL MBUGUA 10TH RESPONDENT

ROSEWITA ATIENO OCHALI 11TH RESPONDENT

SATISH CHAMPALAL RAJPUT 12TH RESPONDENT

AND

MARTIN MUNYU INTERESTED PARTY



RULING

1. The application before the court is the chamber summons dated May 24, 2023 filed by the respondents under section 36 of the *Arbitration Act*, 1995 seeking recognition and enforcement of the arbitral award published by the interested party (“the arbitrator”) on May 20, 2022 (“the award”). The application is supported by the 1st applicant’s affidavit sworn on the same date. It is opposed by the respondents through the grounds of opposition dated June 5, 2023.
2. Under section 32(A) of the *Arbitration Act*, an arbitral award is final and binding upon the parties and no recourse is available against the award otherwise than in the manner provided by the *Arbitration Act*. The High Court, under section 36 of the *Arbitration Act*, has the power to recognise and enforce domestic arbitral awards once the original arbitral award or a duly certified copy of it and the original arbitration agreement or a duly certified copy of it. Section 37 of the *Arbitration Act* sets out the grounds upon which this court can decline to recognize or to enforce an arbitral award which grounds mirror those in section 35 for setting aside an award.
3. The applicants’ application to set aside the award was dismissed on April 20, 2023 hence there is no impediment in allowing the respondents’ application particularly since the applicants have not raised any facts or issues that fall within the section 37 of the *Arbitration Act* and which would entitle this court to refuse to enforce the award.
4. In their grounds of opposition, the applicants raise two grounds against the award. First, that the court is functus officio and the matter closed. I reject the argument since it is the statutory right of the respondents to apply for recognition and enforcement of the award and the court can only refuse to recognise and enforce it if the grounds for refusal in section 37 of the *Arbitration Act* are proved. As I have stated, the applicants have not discharged that burden. Second, the applicants urge that the value of the subject matter falls with the pecuniary jurisdiction of the Magistrates Court. This argument lacks merit as the jurisdiction to enforce an arbitral award is specifically vested in the High Court by section 36(1) of the *Arbitration Act*.
5. For reasons I have set out, I allow the respondents’ application dated May 24, 2023 on terms that:
 - a. The award dated May 20, 2022 be and is hereby recognized and entered as a judgment of this court and that leave be and is hereby granted to the respondents to enforce the award.
 - b. The applicants shall bear the costs of the application assessed at Kshs 25,000.00 only.

DATED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JULY 2023.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango.

Mr Mbithi instructed by Mutuku Mbithi and Butoyi Advocates for the Applicants.

Mr Gichuki instructed by Mulondo and Company Advocates LLP for the Respondents.

