



REPUBLIC OF KENYA



KENYA LAW
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**Jitihada Furniture Centre Ltd v Anwar (Environment & Land Case
248 of 2018) [2023] KEELC 17048 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17048 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 248 OF 2018**

**LN MBUGUA, J
APRIL 20, 2023**

BETWEEN

JITIHADADA FURNITURE CENTRE LTD APPLICANT

AND

ASAD ANWAR RESPONDENT

RULING

1. Coming up for determination is the application dated 9.3.2022 where the plaintiff is seeking leave to appeal this courts decision of 23.2.2022.
2. The application is premised on the grounds set out on the face of the application and on the Supporting Affidavit of one Ally I. Mwangi, who is the managing director of the applicant.
3. The applicant contends that they were aggrieved by the decisions of this court of 25.3.2022 in which plaintiffs application dated 10.3.2021 was dismissed. In their submissions dated 1.3.2023, the applicants contend that without leave of this court, the applicant is not entitled to lodge the notice of appeal. In support of their arguments, the applicants have relied on the cases of: *Peter Nyaga Muvake v Joseph Mutunga* [2015] eKLR, *Kenya Electricity Transmission Co. Limited (Ketraco) v Instalaciones Inabensa S.A* (Miscellaneous Application E56 of 2021) [2021] KECA 151 (KLR) (19 November 221) (Ruling) and *Kenya Union of Savings & Credit Co-operative Limited v Onsando Osiemo T/A Onsando Osiemo & Company Advocates* [2014] eKLR.
4. The Respondent who is the defendant in the suit has opposed the application vide his Replying Affidavit dated 25.11.2022 where he avers that in tandem with the provisions of Section 35 of the *Arbitration Act*, there is no right of appeal from a decision of the High Court. That under Section 39 thereof the court can only determine an application on appeal on questions arising from the award, if the parties had agreed that such an appeal could be made.



5. I have considered all the arguments raised herein. It is noted that there is an arbitral award which was published on 14.12.2020 of which the plaintiffs/applicant made an application dated 10.3.2021 seeking orders *inter-alia* to set aside the said award. Vide a ruling delivered by this court on 23.2.2022, the court dismissed the application. It follows that this court is functus officio in so far as the dispute between the two protagonist is concerned. This court cannot therefore purport to consider such questions as to whether the arbitral tribunal over stepped its mandate or not.
6. The applicant desires to appeal against the said ruling but they cannot do so by dint of section 75 of *Civil Procedure Act* and Order 42 of *Civil Procedure Rules*. To this end, I find that the cases cited by the applicant are applicable herein. The question as to the validity of the appeal can only be canvassed once such an appeal comes into existence.
7. In the circumstances the application dated 9.3.2022 is allowed but the Respondent/defendant is awarded the cost of the said application. The Notice of Appeal to be lodged within 14 days from the date of delivery of this ruling otherwise the leave granted herein shall lapse.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Athman holding brief for Khan for Respondent

Essami holding brief for Nyamu for Applicant

Court assistant: Joan

