



REPUBLIC OF KENYA



**Majani & another v Salisbury Limited (Miscellaneous Application 445 of 2016)
[2022] KEHC 16 (KLR) (Commercial and Tax) (27 January 2022) (Ruling)**

Neutral citation: [2022] KEHC 16 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION 445 OF 2016
WA OKWANY, J
JANUARY 27, 2022**

BETWEEN

FELIX MAJANI 1ST CLAIMANT

FAITH NGINA KARANJA 2ND CLAIMANT

AND

SALISBURY LIMITED RESPONDENT

RULING

1. This ruling is in respect to the application dated 23rd September 2016 wherein the applicants/claimants seek the following orders: -
 - 1) THAT the Arbitral award dated 13th September 2016 and delivered on the same day by Mr. George Gitonga Murugara (MCIArb) be and is hereby adopted as the decision of the Honourable court.
 - 2) THAT judgment be and is hereby entered in terms of the arbitral award dated 13th September 2016.
2. The application is brought under Order 46 Rule 18 of the *Civil Procedure Rules*, Section 36(1) of the *Arbitration Act* and under Rule 9 of the *arbitration Rules* 1997.
3. The application is supported by the affidavit of Mr. Samora Owino and is based on the grounds that: -
 - a. THAT in accordance to clause 12 of the Agreement for sale dated 10th October 2012, the parties herein submitted the disputes among them before the Sole arbitrator appointed by the Chartered Institute of Arbitrators Kenya.



- b. THAT the Arbitration was conducted under the directions and instructions of the sole Arbitrator, Mr. George Gitonga Murugara (MCI Arb) who delivered his arbitral award on 13th September 2016
- c. THAT the Arbitral award dated 13th September 2016 has not been appealed against, set aside or opposed in anyway.
4. The respondent opposed the application through the replying affidavit of its Managing Director Ms. Anne Wanjiku Nderitu who states that she is not aware of the arbitration proceedings because she started managing the Company after the demise of her brother and Managing Director, Mwangi Bernard Nderitu. She further states that the respondent company is willing to settle the applicant's claim of Kshs 2,326,080 through monthly installments of Kshs 200,000 per month until payment in full. She however opposed the arbitral award of Kshs 3,000,000 while arguing that it is exorbitant and prejudicial to the respondent.
5. The application was canvassed by way of written submissions which I have considered. The main issue for determination is whether the application meets the conditions for the enforcement of an arbitral award as set out under Section 36 of the Arbitration Act which stipulates as follows: -
- “36. (1) An arbitral award, irrespective of the state in which it was made 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) Unless the High Court otherwise orders, the party replying on an arbitral award or applying for its enforcement shall furnish—
- (a) the duly authenticated original arbitral award or a duly certified copy of it; and
- (b) the original arbitration agreement or a duly certified copy of it.
- (3) If the arbitral award or arbitration agreement is not made in the English language, the party shall furnish a duly certified translation of it into the English language.”
6. In *Samura Engineering Limited vs Don-Wood Co Ltd [2014] eKLR* the court of held as follows;-
- “Of course, section 36(1) of the Act requires an application in writing for recognition and enforcement of an award to be made. But, the application is subject to sections 36 and 37 of the Act, and I should add, to the Constitution. Section 36(3) of the Act makes it mandatory that the party applying for recognition and enforcement of the award should file; 1) the duly authenticated original award or a duly certified copy of it; and 2) the original arbitration agreement or certified copy of it. Doubtless, the award must be filed...”
7. The applicants' case is that they have fulfilled all the conditions preceding the enforcement of the award. The maintain that through a consent recorded on 15th December 2016, the respondent agreed to settle the arbitral award by way of monthly installments of Kshs 200,000 which agreement the respondent did not honor.
8. My finding is that the instant application meets the threshold set for the enforcement of an award as both the arbitral agreement and award have been filed before this court. Pursuant to the provisions of section 37 of the Arbitration Act, the burden shifted to the respondent to prove that the award is not ripe for enforcement. I however note that not only has the respondent not applied to set aside



the award but that it also undertook to settle the award amount through monthly installments which undertaking it has not honored.

9. In the circumstances of this case, I find that the applicants have made out a case for the granting of the orders sought in the application dated 23rd September 2016 which I hereby allow in the following terms: -
- a. That the final award prepared by Mr. George Gitonga Murugara (MCI Arb) dated 12th September 2016 is hereby recognized and adopted as the judgment of this Court.
 - b. That leave is granted to the applicant to enforce the award as a decree of this court.
 - c. That the costs of the application shall be borne by the Respondent.

Dated, signed and delivered via Microsoft Teams at Nairobi this 27th day of January 2022 in view of the declaration of measures restricting court operations due to Covid-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on the 17th April 2020.

W. A. OKWANY

JUDGE

In the presence of: -

Mr. Omondi for claimant.

No appearance for the respondent.

Court Assistant: Margaret

