



Misort Africa Limited v Principal Secretary the National Treasury and Planning (Arbitration Cause E049 of 2021) [2022] KEHC 107 (KLR) (Commercial and Tax) (18 February 2022) (Ruling)

Neutral citation: [2022] KEHC 107 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
ARBITRATION CAUSE E049 OF 2021
DAS MAJANJA, J
FEBRUARY 18, 2022
IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT
AND RECOGNITION OF AN ARBITRAL AWARD

BETWEEN

MISORT AFRICA LIMITED APPLICANT

AND

**PRINCIPAL SECRETARY THE NATIONAL TREASURY AND
PLANNING RESPONDENT**

RULING

1. The application before the court is a Chamber Summons dated 15th November 2021 made under section 36 of the *Arbitration Act*, 1996 seeking an order that the Arbitrator's Award made and published on 3rd August 2021 ("the Final Award") be recognised as binding between the parties and it be enforced as a decree of this court. The application is supported by the affidavit of the Applicant's director, Martin Kanyingi, sworn on 15th November 2021.
2. The Respondent opposes the application. It has filed a Statement of Grounds of Opposition dated 2nd December 2021 and the replying affidavit of Dr Julius Muya, the Principal Secretary/National Treasury, sworn on 14th December 2021.
3. I heard brief oral arguments on the matter and reserved this ruling.
4. In its opposition, the Respondent seeks to stay the application on the grounds that the time for setting aside the Final Award under section 35 of the *Arbitration Act* has not lapsed and that it intends to challenge the Final Award within the time limited for setting aside an award.



5. It is not disputed that the Final Award was published on 3rd August 2021 but according to the Respondent, it received the award on 25th October 2021 hence it had three months to apply to set it aside. That upon receipt of the Final Award, it filed a Notice and Request for Rectification and Clarification of the Award under section 34 of the *Arbitration Act* on 10th November 2021. The Arbitral Tribunal issued its determination on the Request on 18th November 2021. The Respondent therefore asserts that in this case, the time for filing the application to set aside award is reckoned from the date of determination of the Request for Rectification and Clarification of the Final Award hence it has three months from 18th November 2021 to file the application to set aside the Final Award which time expires on 18th February 2021.
6. The Applicant takes a different view of the matter. Counsel for the Applicant contends that the time for filing the application to set aside under section 35 of the *Arbitration Act* is reckoned from the date of when the Final Award was published, that is, 3rd August 2021 and not when it is received. That that time had already lapsed when the Request for Rectification and Clarification was filed. He submits that the fact the Tribunal went ahead to render rectification does not affect the right to apply for recognition and enforcement.
7. Without deciding the matters at hand, I think the overriding issue is whether the court should give the Respondent an opportunity to lodge its application to set aside the Final Award before recognizing and enforcing the Final Award. I am cognizant of the fact that once the order of recognition is entered, the Final Award merges into a judgment and decree of this court and the Final Award ceases to have its own existence hence it may not be possible to set it aside. On the other hand, the Applicant will still have the opportunity to raise the objection that the application for setting aside is time barred.
8. I think it is in the interests of justice that the Applicant be given the opportunity to file and prosecute its application to set aside the Award once it is filed. Since the last day for filing such an application according to the Applicant is on 18th February 2022, the Applicant will not be unduly prejudiced.
9. I therefore direct that once the Application to set aside is filed, the court will give further directions for disposal of this matter.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF FEBRUARY 2022.

D. S. MAJANJA

JUDGE

Mr Namachanja instructed by Namachanja Mbugua Advocates for the Applicant.

Mr Kiarie, Principal State Counsel, instructed by the Office of the Attorney General for the Respondent.

