



REPUBLIC OF KENYA



Water and Sanitation for Poverty Reduction v Water Services Trust Fund (Arbitration Cause E028 of 2021) [2022] KEHC 544 (KLR) (Commercial and Tax) (21 April 2022) (Ruling)

Neutral citation: [2022] KEHC 544 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
ARBITRATION CAUSE E028 OF 2021**

JN MULWA, J

APRIL 21, 2022

BETWEEN

WATER AND SANITATION FOR POVERTY REDUCTION PLAINTIFF

AND

WATER SERVICES TRUST FUND RESPONDENT

RULING

1. By a Chamber Summons application dated 30/9/202 and filed by the Applicant, Water and Sanitation for Poverty Reduction on the 30/9/2021 against the Respondent-Water Services Trust Fund, the Applicant sought orders that:
 - i. Leave be granted to enforce the corrected final award as to costs made by the sole Arbitrator dated 27/9/2019 as a decree of the court.
 - ii. That costs of the application be provided.
 - iii. That the Respondent be ordered to pay costs of the enforcement and execution of the decree.
2. The Chief Executive Officer of the Applicant, Engineer William Kamau swore the Supporting Affidavit on the 30/9/2021 and annexed several exhibits.
3. Among the exhibits is the final corrected Arbitral award on costs dated 27/9/2019 tabulating the costs as hereunder:



i.	Party & party costs	Kshs. 669,354.69
	VAT @16% p.a	Kshs. 107,096.75
		Kshs. 776,451.44
ii.	Tribunals outstanding fees	Kshs. 714,479.00
	VAT @ 14% p.a	Kshs. 114,317.00
	Expenses	Kshs. 20,550.00
		Kshs. 849,346.00
iii	Refund to Respondent@simple Interest of 14% p.a	Kshs.162,000.00

4. I have seen a demand notice sent to the Respondent to pay the above amount, but which elicited no response. It is dated 5/11/2019.
5. The Applicant further filed written submissions to argue its position. The respondent despite having been given able time and opportunity to file its submissions, it has failed to do so.
6. The application is grounded on the provisions of the Arbitration Act, 1995 and rules made thereunder, in particular Sections 34, 36 and 37(2) of the Act and Rules 6 and 9 of the Arbitration Act, 1997. The sole Arbitrator tabulated the costs and filed the award. The court notes that no application was made to set aside or vary the award, in terms of Section 37 of the Act. It is therefore uncontested.
7. Section 36 thereof speaks of recognition and enforcement of arbitral awards. The original and corrected award was filed in terms of Sections 34 and 36(3)(a). In the premises, I find that the award as filed is therefore recognizable and enforceable, in the absence of any objections in line with Section 35 of the Act that provides for objections and setting aside of arbitral awards.
8. To that end therefore, and in the absence of any agreement between the parties, and pursuant to provisions of Section 36(1) of the Act, the award on costs dated 27/9/2019 is recognized as binding and enforceable as a judgment and decree of the court.
9. For the above reasons, I find the application dated 30/9/2021 to be meritorious.

ORDERS

- a. The Applicant/Plaintiff is granted leave to enforce the corrected and final award as to costs made on the 27/9/2019 as a judgment and decree of the court.
- b. The Respondent is ordered to pay costs on the enforcement and execution of the said decree, as may be extracted and certified by the Deputy Registrar of the Court.
- c. The Respondent is further ordered to pay costs of this application.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF APRIL 2022.

J. N. MULWA



JUDGE

