



**MA Consulting Group v Ministry of Agriculture, Livestock and
Fisheries & another (Miscellaneous Civil Suit E551 of 2021)
[2022] KEHC 10295 (KLR) (Commercial and Tax) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10295 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL SUIT E551 OF 2021**

JN MULWA, J

JUNE 23, 2022

IN THE MATTER OF THE ARBITRATION ACT, 1995

-AND-

IN THE MATTER OF THE ARBITRATION RULES 1997

-AND-

IN THE MATTER OF AN APPLICATION FOR ADOPTION OF AN ARBITRATION AWARD

-AND-

IN THE MATTER OF AN ARBITRATION

BETWEEN

MA CONSULTING GROUP APPLICANT

AND

**MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES 1ST
DEFENDANT**

ATTORNEY GENERAL 2ND DEFENDANT

RULING

1. Before court is a Chamber Summons dated 20th September 2021 brought under Section 36 *Arbitration Act*, Act No. 4 of 1995, Rules 4(1) & (2), 9 and 11 of the Arbitration Rules 1997, Sections 1A, 1B and 3A of the *Civil Procedure Act* and any other enabling provisions of the law. The Applicant seeks the following orders:



1. That the Arbitral Award by Mr. Gichinga Ndirangu, FCI Arb, sole Arbitrator, dated 28th July 2020 be and is hereby recognized as binding and adopted as judgment of the court.
2. That leave be and is hereby granted to the Applicant to enforce the said Award and/or Judgment as a Decree of the Honourable Court.
3. That a Decree do issue to the Applicant for enforcement against the Respondents in the following terms:
 - a. The Respondents to pay the Applicant the total sum of Kshs. 12,368,012/=.
 - b. That the costs of this application as well as such costs and expenses as are incidental to the arbitration, enforcement and execution of the Award filed herewith be provided for.
 - c. That the Respondents do pay the Applicant interests on sub clause 3 (a) above as Court rates being 14% from the date of publication of the Award, being 28th July, 2020 until payment in full.
 - d. That the Respondents to pay the Applicant the awarded costs of the Arbitration as follows:
 - i. Costs of hire of the venue: Kshs. 20,000/-
 - ii. Appointment fee of an arbitrator: Kshs. 15,000/-
 - iii. Arbitrator's fees: Kshs. 355,000/- plus interest at the prevailing court rates from 28th July 2020 until payment in full
 - iv. Costs of writing the award: Kshs. 120,000/- plus interest at the prevailing court rates from 28th July 2020 until payment in full
 - e. That the Respondents to pay the Applicant costs of the suit herein, if not agreed upon, to be taxed by the Deputy Registrar.
2. The application is supported by an Affidavit sworn on 20th September 2021 by the Applicant's Managing Director Ngure Mwaniki.
3. The Respondents opposed the application by way of a Notice of Preliminary Objection dated 21st February 2022. However, the same was withdrawn when parties appeared in court for the hearing of the application. The application is therefore unopposed.
4. Enforcement of arbitral awards is governed by Section 36 of the [Arbitration Act](#) which provides that:-
 - “(1) A domestic arbitral award, 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) An international arbitration award shall be recognized as binding and enforced in accordance to the provisions of the New York Convention or any other convention to which Kenya is signatory and relating to arbitral awards.
 - (3) Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement must furnish—
 - (a) the original arbitral award or a duly certified copy of it; and



- (b) the original arbitration agreement or a duly certified copy of it.
- (4) 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.
- (5) In this section, the expression “New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations General Assembly in New York on the 10th June, 1958, and acceded to by Kenya on the 10th February, 1989, with a reciprocity reservation.”
5. The Applicant has annexed to its supporting affidavit a copy of the contract entered into between it and the 1st Respondent on 29th January 2015. It has also exhibited a certified copy of the Final Award made by the sole arbitrator, Gichinga Ndirangu, FCI Arb, on dated 28th July 2020 in which it was ordered that: “In respect of the costs of the arbitration, the Respondent and the Claimant shall pay in equal proportion the cost of hire of the venue. A party that has paid or pays beyond its share is entitled to seek reimbursement by way of contribution from the other party. The cost of hire of venue to be based on invoices issued by the Kenya Branch of the Chartered Institute of Arbitrators. The Parties shall also pay in equal proportion, the appointment fee of an arbitrator amounting to Kshs 15,000 paid to the Kenya Branch of the Chartered Institute of Arbitrators. A party that has paid or pays beyond its share is entitled to seek reimbursement by way of contribution from the other party. The Respondent shall pay and bear 75 per cent of my fees in respect of writing of this Final Award which fees I determine at Kshs 360,000 (based on the total of Kshs 480,000) less any deposit paid. To the extent that the Claimant pays any part thereof beyond 25 per cent, the Respondent shall forthwith reimburse to the claimant that amount within a period of 30 days failing which the outstanding amount shall be paid with interest at the prevailing court rates from the date of publication of this award until the date of such reimbursement. The Respondent and Claimant shall pay all the other costs of the arbitration (other than costs of the Final Award) in equal proportion and these amount to a total of Kshs 230,000 as per my final invoice. The Respondent shall pay to the claimant a sum of Kshs 5,708,313.30 being the 30 per cent due on the contract sum in respect of submission of the Inception Report. The Respondent shall pay to the claimant, damages in the sum of Kshs 6,659,698.85 for breach of contract following the unilateral termination of the contract agreement January 29, 2015. This amount shall be paid with interest at the prevailing court rates from the date of publication of this award until payment in full.”
6. The Applicant’s averment that the Respondent had full knowledge of delivery of the award and its contents was not controverted. Further, no application was made for the setting aside of the award under Section 35 of the Arbitration Act and neither has the Respondent established any ground under Section 37 of the Act that would convince the court to refuse to recognize the award.
7. For the foregoing, the Applicant’s application dated 20th September 2021 is allowed with no order as to costs.

Orders accordingly.

DELIVERED DATED AND SIGNED THIS 23RD DAY OF JUNE 2022.

J. N. MULWA

JUDGE.

