



REPUBLIC OF KENYA



**Makaazi Management Company Limited v Panestate Development
Limited (Miscellaneous Civil Application 418 of 2021)
[2022] KEHC 10759 (KLR) (Commercial and Tax) (23 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION 418 OF 2021**

**WA OKWANY, J
JUNE 23, 2022**

BETWEEN

MAKAAZI MANAGEMENT COMPANY LIMITED APPLICANT

AND

PANESTATE DEVELOPMENT LIMITED RESPONDENT

RULING

1. The applicant seeks the following orders in the application dated 10th February 2021: -
 1. That this honourable court be pleased to recognize and adopt the final award given by Mr Patterson Munene Kamaara on April 11, 2019 as a Judgment of this Honourable Court;
 2. That Judgement be and is hereby entered in favour of the applicant herein as against the respondent in terms of the Final Award published on April 11, 2019 by Mr Patterson Munene Kamaara.
 3. That the honourable court be pleased to grant leave to the applicant to enforce the said Award as a decree of this Honourable Court;
 4. That the costs of this application be paid by the Respondent.
2. The application is brought under section 36 of the *Arbitration Act* 1995 and rules 9 and 11 of the *Arbitration Rules* 1997. It is supported by the affidavit of the applicant's Director Ms. Esther Wanjiku Weru and is based on the following grounds: -
 1. That the respondent herein; who was the claimant in the arbitration matter, is truly indebted to the applicant as per the final award dated April 11, 2019;



2. That the respondent has not settled the amounts specified in the Award nor made any effort whatsoever to settle the same.
 3. That the applicant company is therefore desirous of enforcing the Award and it is necessary that this honourable court first recognizes and adopts the award.
 4. That vide a notice of motion application dated May 10, 2019, filed in this honourable court in Miscellaneous Case No E 158 of 2019, the respondent herein sought to have the said Award published by Mr Patterson Munene Kamaara set aside but the said application was dismissed with costs to the Applicant herein by Lady Justice Mary Kasango on April 29, 2020.
 5. That it is in the interest of substantive justice that the honourable court accedes to the applicant's request to enforce the final award on the respondent and make it honour the orders of the award.
3. The respondent opposed the application through the grounds of opposition dated June 21, 2021 wherein it states that:-
1. That the application as drawn and taken out is misconceived, bad in law and is devoid of merit.
 2. That the notice of motion application is otherwise frivolous, vexatious and an abuse of the process of the honourable court.
4. I have considered the application, the respondent's grounds of opposition and the parties' respective submissions. The main issue for determination is whether the applicant has made out a case for the enforcement of an arbitral award as provided for 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.

5. In Samura Engineering Limited v 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...”

6. I have perused the application and I note that the arbitral award and a certified copy of the lease arbitration Agreement have been produced as annexures. I am satisfied that the applicant has met the conditions set under section 36 of the [Arbitration Act](#).

7. In sum, I find that the application dated February 10, 2021 is merited and I therefore allow it as prayed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 23RD DAY OF JUNE 2022.

W. A. OKWANY

JUDGE

In the presence of: -

Ms Wambui for the Applicant

No appearance for the Respondent.

Court Assistant- Sylvia

