



Cubic Business Solution Limited v Egerton University (Commercial Miscellaneous Application E380 of 2022) [2022] KEHC 12898 (KLR) (Commercial and Tax) (29 July 2022) (Ruling)

Neutral citation: [2022] KEHC 12898 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E380 OF 2022
DO CHEPKWONY, J**

JULY 29, 2022

**IN THE MATTER OF: THE APPLICATION BY CUBIC BUSINESS
SOLUTION LIMITED FOR THE RECOGNITION AND
ENFORCEMENT OF AN ARBITRAL AWARD
AND
IN THE MATTER OF: THE ARBITRATION ACT**

BETWEEN

CUBIC BUSINESS SOLUTION LIMITED APPLICANT

AND

EGERTON UNIVERSITY RESPONDENT

RULING

1. On July 21, 2022, Mr. Kaburu and Mr. Masafu appeared before this court appearing for the Plaintiff and Defendants respectively. Mr. Kaburu submitted that the matter was scheduled for hearing of the Plaintiff's Chamber Summons application dated May 15, 2022, whereby he was ready to proceed with the same even though no response had been filed.
2. On the other hand, Mr. Masafu sought for an adjournment and leave to be able to file Grounds of Opposition and a Replying Affidavit to the said application. However, the Defendant's counsel also brought to court's attention that there is a related application filed vide Miscellaneous Commercial Application No.E017 of 2022 in which the Applicant is seeking to have the Arbitral Award set aside. He averred that the same had been served upon the Applicant's erstwhile Advocates. He then proposed that the application dated May 15, 2022 be heard together with the one in Miscellaneous Commercial Application No.E017 of 2022.



3. Mr. Kaburu was adamant that the counsel for the Defendant had not given any plausible reason to warrant an adjournment being granted in the matter. However, the court granted the adjournment and called for the file in Miscellaneous Application No.E017 of 2022 to be availed for mention alongside the instant case so as to avoid any conflict in directions and or orders.
4. This court thus reconvened on July 27, 2022 and Mr. Kaburu briefed court on why the matter had previously been adjourned. He told court that the Defendants' counsel had misled court in submitting that he had served an application upon the Applicant's erstwhile advocate. He retorted that the same was served a day before the counsel showed up on 27th July, 2022. In his view, counsel for the Applicant stated that the hearing of the application dated 15th May, 2022 ought not to have been adjourned in the first place.
5. In response, Mr. Masafu owned up the accusation that they had not served the application as earlier submitted but added that the same was inadvertently served on a different firm believed to have been the Applicant's advocates. Mr. Masafu also believes that the Respondent had filed a Replying Affidavit and Grounds of Opposition on the application dated 15th May, 2022 but insisted that the application should be heard with the twin application in E017 of 2022 for consistency and in the interest of justice.
6. Having considered the submissions by the respective counsel for the parties herein, I have perused the Miscellaneous Commercial Application No.E017 of 2022 availed to me and established that the file is different from the one that was referred to by the Respondent herein, despite being of similar case number. File Miscellaneous Application No.E017 of 2022, the parties are Kenya Revenue Authority and Stanbic Bank (K) Ltd and 11 Others whilst the parties herein are referring to Miscellaneous Commercial Application No.E017 of 2022 between Egerton University as the Applicant while Cubic Business Solution Ltd is the Respondent.
7. Nonetheless, I have read through a Notice of Motion application dated February 17, 2022 filed in Miscellaneous Application NO.E017 of 2022 which is annexed to the Replying Affidavit by the Respondent in this matter. I have established that the two applications seek opposite orders in that, the Chamber Summons application dated May 15, 2022 seek the adoptions of the Arbitral Award as Judgment of this court whilst the Notice of Motion Application dated February 17, 2022 filed in Miscellaneous Application No.E017 of 2022 seeks to set aside the same Arbitral Award. I agree with the Respondent's submissions that the two applications should be heard together for consistency and to avoid possibility of conflicting orders on the same subject. In addition the Civil Procedure Act precludes the existence/hearing of parallel suits on the same subject and dictates the way forward as either staying the later matter or hearing the same consolidated if the issues of facts or law arising are similar.
8. It is beyond rebuttal that the issues arising both in fact and law in the application dated February 17, 2022, are similar and the determination of one application will lead to the determination of the other.
9. For the reasons outlined above, I direct that the two applications be heard and determined together. However, to avoid wastage of judicial time, and duplication of pleadings and responses on the two applications the following directions issue:-
 - a) That the parties file and serve written submissions with respect to the two applications but limited to the following issues for determination;
 - i) Whether the Arbitral Award published on November 5, 2021 should be set aside; and,
 - ii) Whether the Arbitral Award published on November 5, 2021 should be recognized as binding and enforceable as Judgment and final decree of the court.



- b) Each party to file and serve written submissions within 14 days.
- c) Miscellaneous Application No.E017 of 2022 between Kenya Revenue authority and Stanbic Bank (K) Ltd to be returned to the Registry.
- d) The Deputy Registrar to call for and avail Miscellaneous Civil Application No.E017 of 2022 between Egerton University and Cubic Business Solution Ltd (CBSL) on the next mention date.
- e) That there shall be stay of proceedings in the said Miscellaneous Civil Application No.E017 of 2022 between Egerton University and Cubic Business Solution Ltd (CBCL) pending the Ruling on the issues singled out for determination herein.
- f) Mention on October 4, 2022 for parties to confirm compliance and further directions.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 29TH DAY OF JULY 2022.

D. O. CHEPKWONY

JUDGE

In the presence of:

Mr. Opwaka counsel holding brief for Mr. Masafu counsel for Respondent

Court Assistant - Sakina

