



Ujenzi Bora Investment Limited v Africa Forest Lodges Limited (Miscellaneous Civil Application 266 of 2018) [2022] KEHC 12270 (KLR) (Commercial and Tax) (12 August 2022) (Ruling)

Neutral citation: [2022] KEHC 12270 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION 266 OF 2018**

A MSHILA, J

AUGUST 12, 2022

BETWEEN

UJENZI BORA INVESTMENT LIMITED CLAIMANT

AND

AFRICA FOREST LODGES LIMITED RESPONDENT

RULING

Introduction

1. The applicant moved the court by way of Chamber Summons pursuant to the provisions of Section 36(1) of the *Arbitration Act* No.4 of 1995 and Rules 6 and 9 of the *Arbitration Rules* 1997 and all other enabling provisions of the Law. The application was supported by the grounds on its face and by the Supporting Affidavit made by Nigel Wilson Brown; The applicant sought the following substantive orders;
 - i. The Additional Arbitral Award on costs dated 5/10/2018 delivered by Sylvia Mueni Kasanga MCI Arb, the Arbitrator be recognized and adopted as an order of this Honourable Court.
 - ii. The applicant be granted leave to enforce the Additional Arbitral Award dated 5/10/2018 delivered by Sylvia Mueni Kasanga MCI Arb, the Arbitrator in the Arbitration between the parties herein, as an Order of the Court.
 - iii. The costs of the application be payable by the Claimant.
2. The application was served on the Claimant and at the date set down for hearing no objection or appeal had been preferred against the Additional Arbitral Award;
3. The applicant in canvassing the application relied on the Supporting Affidavit and the certified copy of the Additional Arbitral Award annexed thereto; hereunder is a summary of the applicants claim;



Applicants' Case

4. A dispute arose between the parties arising from a Contract dated November 24, 2025; The matter was referred to arbitration and on the 5th March, 2018 an award on the merits was delivered by the sole Arbitrator one Sylvia Mueni Kasanga; the Respondent/Applicant was awarded a sum of USD 206,074/05 together with costs of the claim and the counter-claim against the Claimant.
5. Subsequent to the Award the Arbitrator assessed the Respondent/Applicants Bill of Costs of the Arbitration by rendering an Additional Award dated 5/03/2018 in the sum of Kshs.2,860,524/-;
6. By a Ruling and Order dated April 29, 2020 the Award was adopted as a judgment and decree of the Court; but notwithstanding a request being made by the Respondent/Applicant for the adoption of the Additional Award on the costs of the Arbitration, the Honourable Court inadvertently omitted to include the same;
7. The time within which an appeal or challenge against the Decree of the court or against the Additional Award has since lapsed without any being preferred; and it is just and fair that the application be allowed so as to enable the applicant to execute the Decree of the Court;

Issues For Determination

8. After reading the Application, the Supporting Affidavit and perusing the Annexure this court has framed only one issue for determination;
 - i. Whether the applicant has made out a case for recognition and adoption and enforcement of the Additional Award as a judgment of the court;

Analysis

9. At the time the application was being canvassed before this court there was no evidence of an Objection raised by the Claimant nor had any appeal been preferred against the Additional Award rendered by the Arbitrator; this would mean that the application was uncontroverted and the matter proceeded for hearing unopposed.
10. The applicant herein has presented this court with an Additional Arbitral Award dated the 5/03/2018 and seeks that the same be recognized and adopted as a judgment court; the application is supported by the Certified copy of the Award and the copy of the decree dated 6/01/2021 which were also presented to this court in compliance with Section 36(3) of the *Arbitration Act*;
11. This court reiterates that the application was unopposed and that there were no grounds presented to this court by the Claimant as provided by Section 37(1) of the *Arbitration Act* that would have vitiated the Additional Arbitral Award; having perused the documents presented and after satisfying itself that the necessary provisions of the law had been complied with this court is satisfied that there are no anomalies in the Additional Arbitral Award that may lead this court to refuse to recognize and adopt the Additional Arbitral Award;
12. In the absence of any application to set aside the award under the listed grounds for non-recognition or any other challenge or any preferred appeal, this court finds that the applicant has satisfied the conditions precedent and finds that the application to be merited.

Findings And Determination

13. For the forgoing reasons this court makes the following findings and determinations;



- i. This court finds that the application to be merited and it is hereby allowed;
- ii. The Additional Arbitral Award on costs dated 5/10/2018 delivered by Sylvia Mueni Kasanga MCIArb, the Arbitrator be recognized and adopted as an order of this Honourable Court.
- iii. The applicant be and is hereby granted leave to enforce the Additional Arbitral Award dated 5/10/2018 delivered by Sylvia Mueni Kasanga MCIArb, the Arbitrator as an Order of the Court.
- iv. The applicant shall bear its own costs of this application.

Orders accordingly.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 12TH DAY
AUGUST, 2022.**

HON. A. MSHILA

JUDGE

In the presence of;

Olala holding brief for Litoro for the Respondent/Applicant

No appearance for the Claimant

Lucy -----Court Assistant

