



**Majazao Limited v Kapiti Investments (Miscellaneous Civil Application
E068 of 2020) [2022] KEHC 13026 (KLR) (Civ) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13026 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
MISCELLANEOUS CIVIL APPLICATION E068 OF 2020**

JK SERGON, J

SEPTEMBER 23, 2022

BETWEEN

MAJAZAO LIMITED APPLICANT

AND

KAPITI INVESTMENTS RESPONDENT

RULING

1. Before me for consideration and determination is the notice of motion dated July 22, 2020 brought by the applicant and supported by the grounds laid out in its body and the facts stated in the affidavit of advocate Martin Mutisya Muthengi. Here, the claimant sought for the following orders:
 - i. This honourable court be pleased to compel the respondent to pay the arbitration fees/costs of Kshs 220,000/= to enable the parties collect the arbitral award.
 - ii. In the alternative and without prejudice to the foregoing, this honourable court be pleased to compel the arbitrator Anthony Milimu Lubulellah to release the arbitration award to the applicant.
 - iii. The cost of the application be provided for.
2. Anthony Milimu Lubulellah (“the arbitrator”) put in the grounds of opposition dated March 15, 2022 in reply to the motion, where he raised the following grounds:
 - a. The arbitrator is *functus officio*.
 - b. The arbitrator has a lien on the award pending full settlement of arbitration costs and fees and is ready to release the award upon settlement, whether the same is paid by the applicant or the respondent.



- c. The arbitrator is not a party to Misc Application No E068 of 2020 as the same is a contest between Majazao Limited and Kapiti Investments and it is oppressive to cite the arbitrator in that contest.
3. It is apparent from the record that by way of the consent entered into between the applicant and the arbitrator on May 31, 2022, prayer (ii) of the instant motion was marked as having been abandoned, which therefore dispels with the grounds of opposition.
 4. Going by the record, there is no indication that the respondent put in a response to the instant motion despite evidence of service.
 5. At the interparties hearing of the motion held on July 14, 2022 the parties were directed to put in written submissions. However, at the time of writing this ruling, this court notes that no submissions had been placed before it for consideration.
 6. That said, I have considered the grounds laid out on the face of the motion and the facts deponed in the affidavit supporting the motion.
 7. As earlier noted, the sole issue for determination is whether the respondent ought to be compelled to pay the sum of Kshs 220,000/= being the outstanding balance of the arbitrator's fees.
 8. In his affidavit, advocate Martin Mutisya Muthengi states that following a dispute between the parties herein in respect to the sale of the property known as Mavoko Town block 3/2718, the matter proceeded for arbitration, with the parties appointing the arbitrator to resolve the dispute.
 9. The advocate also states that it was a term of the arbitration agreement that the parties would share the costs of the arbitrator's fees constituting the sum of Kshs 17,500/= per hour and totaling the sum of Kshs 440,000/=.
 10. It is the averment by the advocate that the applicant paid the sum of Kshs 295,000/= which exceeds half the fees amount agreed upon between the parties, but that the respondent has refused and/or neglected to honor its part of the agreement requiring it to pay the sum of Kshs 220,000/= thereby hindering access to the arbitration award.
 11. Upon my perusal of the record, I note that the applicant has annexed documentation to support the averments relating to the arbitration agreement and especially the equal cost sharing of the arbitrator's fees by the parties.
 12. I also note from the record that it is a term in the arbitration agreement that any outstanding fees owed to the arbitrator shall be paid before delivery of the award or within 30 days after notification that the award is ready for collection, which would therefore explain the decision by the arbitrator to hold on to the award until such time as his fees are paid in full.
 13. In the absence of any credible proof by the respondent to demonstrate compliance with the terms on payment of its share of the arbitration fees, I find no basis to decline to grant the orders sought in the motion.
 14. Accordingly, I will allow the notice of motion dated July 22, 2020 in respect to prayer (i) and hereby make the following orders consequently:
 - a. The respondent herein be and is hereby ordered to pay the arbitration fees/costs of Kshs 220,000/= within 60 days of this day, to enable the parties collect the arbitral award.
 - b. The applicant shall have the costs of the motion, to be paid by the respondent.



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

.....

J. K. SERGON

JUDGE

In the presence of:

.....for the Applicant

.....for the Respondent

