



**Said & another v Banda Homes Limited (Civil Suit E020 of 2021)
[2022] KEHC 14265 (KLR) (Commercial and Tax) (21 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14265 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E020 OF 2021
A MSHILA, J
OCTOBER 21, 2022**

BETWEEN

AISHA SAID & SEKOU TRAWALLY CLAIMANT

AND

BANDA HOMES LIMITED RESPONDENT

RULING

1. The Applicant filed a Chamber Summons dated February 17, 2022 under Section 36 of the [Arbitration Act](#) for orders that;
 - a. The Partial Arbitration Award dated January 10, 2022 and filed in Court on February 18, 2022 be enforced as a decree of the Court.
 - b. The costs of this Application be borne by the Respondent in any event.
2. The Application was supported by the sworn Affidavit of Aisha Said who stated that the Award dated January 15, 2021 (marked AST-1) was granted in the Applicant's favour. In addition, the Respondent has not taken any steps to challenge the award.

Issues for Determination

3. The issue for determination is whether the Partial Arbitral Award should be recognized and enforced as an order of the Court?

Analysis

4. The Application herein is uncontested as the Respondents did not file any response even after being served by Advertisement.



5. Being that the Arbitral process is a consensus, voluntary procedure through which parties choose to resolve their dispute; the court can only intervene in that process as set out under Section 10 of the Arbitration Act which provides that:

“Extent of court intervention

Except as provided in this Act, no court shall intervene in matters governed by this Act.”

6. Section 32A of Arbitration Act states:

“Except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it, and no recourse is available against the award otherwise than in the manner provided by this Act.”

7. In *Prof. Lawrence Gumbo & Another vs. Honourable Mwai Kibaki & Others*, High Court Miscellaneous No. 1025 of 2004, the Court held that:

“Our section 10 is based on the United Nations Model Law on arbitration and all countries who have ratified it recognize and enforce the autonomy of the arbitral process. Courts of law can only intervene in the specific areas stipulated in the Act and in most cases that intervention is usually supportive and not obstructive or usurpation-oriented...”

8. Under section 32(A) of the Act an arbitral award is final and binding upon the parties and no recourse is available against the award otherwise than in the manner provided by the Act. The High Court under Section 36 has the power to recognize and enforce domestic arbitral award on the following terms:

“36 (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) ...

(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.”

9. The Applicant has annexed to the Summons a certified copy of the Final Arbitral Award (Annexure ‘AST-1’). However, the Applicant did not annex a copy of the Arbitral Agreement as required under Section 36(3)(b). The Applicant has therefore not met the conditions requisite for the recognition of the Arbitral Award.

Findings and Determination

10. In light of the foregoing this court makes the following findings and determinations;

i. The application is found to have merit and it is hereby allowed.

ii. The court hereby directs the Applicant to file the original Arbitration Agreement with the Court through Deputy Registrar Commercial & Tax Division within 14 days from the date hereof;



- iii. Upon compliance the order of recognition and enforcement of the Arbitral Award dated January 15, 2021 by Arbitrator Prof. Paul Musili Wambua shall be deemed to be granted.

Orders Accordingly

DATED SIGNED AND DELIVERED ELECTRONICALLY AT NAIROBI THIS 21ST DAY OF OCTOBER, 2022.

HON. A. MSHILA

JUDGE

In the presence of;

No appearance by parties

Lucy-----Court Assistant

