



Mits Electrical Company Ltd v Mitsubishi Electric Corporation (Civil Case 132 of 2016) [2022] KEHC 16332 (KLR) (Civ) (16 December 2022) (Ruling)

Neutral citation: [2022] KEHC 16332 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL CASE 132 OF 2016
JK SERGON, J
DECEMBER 16, 2022**

BETWEEN

MIT'S ELECTRICAL COMPANY LTD PLAINTIFF

AND

MITSUBISHI ELECTRIC CORPORATION DEFENDANT

RULING

- 1) The plaintiff filed its application dated May 9, 2018 seeking the following orders:-
 - i. This matter be certified urgent and service thereof be dispensed with in the first instance.
 - ii. Pending the hearing and determination of this application *inter partes*, an order of stay of the ruling of this honourable court issued on March 19, 2018 do issue.
 - iii. The order issued by this honourable court on March 19, 2018 referring this matter to a foreign arbitration in accordance with the terms of the arbitration clause be reviewed and set aside.

- 2) The application is supported by the affidavit of Setya Gandhi. The defendant filed a replying affidavit sworn by Ryuseuke Nishio on June 21, 2018 and his further affidavit sworn on February 9, 2022. Apart from the above application, the defendant filed its application dated June 10, 2019 seeking to have the arbitral award dated November 28, 2018 recognised and enforced as a decree of this honourable court. On October 12, 2021 this court directed that the plaintiff's application dated May 9, 2018 be heard first.



- 3) On March 23, 2012 the court further directed that a ruling on that application was to be delivered on May 10, 2022. This ruling is in relation to that application. Parties agreed to file written submissions but only the defendant complied.
- 4) The background to the application is that on March 19, 2018 this court delivered a ruling whereby it did set aside a default judgment that had been entered in favour of the plaintiff and referred the matter to arbitration. The application seeks to have that ruling reviewed and set aside.
- 5) The applicant contends that the basis for the request is that new and important matters have arisen which could not have been produced by the plaintiff at the time the ruling was made. The plaintiff's former chairperson who was solely privy to the contents of the information in relation to arbitration is now deceased. The court referred the matter to the foreign arbitration on the premise that the plaintiff was participating in the arbitration having submitted itself to the jurisdiction of the arbitrator.
- 6) The respondent contend that the parties entered into a distributorship agreement. Under the terms of the agreement any dispute was to be referred to arbitration. The plaintiff initiated this suit in Kenya and the court referred the matter to arbitration.
- 7) The plaintiff request for the suspension of the arbitration proceedings but this request was declined by the sole arbitrator. The arbitrator heard the dispute on June 11 and 12, 2018. According to the respondent, all relevant court documents have been executed by Satya Gandhi and not Prieya Gandhi.
- 8) The ruling which is the subject of the application for review was delivered by Justice L Njuguna on March 19, 2019. The current application was filed on May 9, 2018 which is about two months after the delivery of the ruling. The applicant contends that there are new matters which have arisen and this include the fact that the plaintiff's chairperson who executed the documents which are the source of the dispute is now deceased. The annexed death certificate show that Prieya Gandhi died at Lavington, Nairobi on November 6, 2017. The ruling of May 19, 2018 was in relation to two applications by the defendant dated August 16, 2016 and February 24, 2017 respectively. The plaintiff responded to the applications by way of affidavits sworn by Satya Gandhi.
- 9) It is therefore evident that when the applications were heard, the late Prieya Gandhi was alive. Her death in November, 2017 cannot amount to new and important matter which could not have been availed to the court in 2016 and 2017.
- 10) Apart from that I have noted that the plaint was filed on May 9, 2016. It was accompanied by a verifying affidavit of Satya Gandhi who averred that she is the managing director of the plaintiff company. She further averred that she was aware of all the matters pertaining to the plaintiff's claim against the defendant. Satya Gandhi also filed a detailed witness statement and attached the distributorship agreements.
- 11) The plaintiff is a limited liability company. The death of the chairperson cannot be a good reason to re-wind the clock and have matters relating to the company resolved by the court reviewed. In the supporting affidavit, Satya Gandhi states that the plaintiff has been contesting the suitability of the arbitral proceedings including jurisdiction of the arbitrator. These issues were dealt with by the sole arbitrator.
- 12) The record shows that the arbitrator dealt with the matter and the final award was made on November 28, 2018. This was about seven (7) months later from the date of filing the current application. I see no error apparent on the face of the record. There is no new information brought by the applicant which can warrant the court to review its ruling. Parties agreed on arbitration in their distributorship agreement and the court referred the matter to arbitration.



13) The upshot therefore is that the application dated May 9, 2018 lacks merit. The same is hereby ordered dismissed with costs to the defendant.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
16TH DAY OF DECEMBER, 2022.**

.....

J K SERGON

JUDGE

In the presence of:

..... **for the plaintiff/respondent**

..... **for the defendant/applicant**

