REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

MISC. CIVIL APPLICATION NO. 56 OF 2020

IN THE MATTER OF THE ARBITRATION ACT, CAP 49 LAWS OF KENYA

AND

IN THE MATTER OF ENFORCEMENT OF AN ARBITRATION AWARD DATED 29TH SEPTEMBER, 2017

BETWEEN

JIMMY MUTUKU MWITHI T/A OASIS FARM....APPLICANT/ RESPONDENT

AND

ERICK OMANGA T/A CIDAI FIRM.....RESPONDENT/ APPLICANT

RULING

1. This ruling disposes two applications. The application dated 18th May, 2020 by Jimmy Mutuku Mwithi t/a Oasis Farm brought against Eric Omanga t/a Cidai Firm, for recognition, adoption and enforcement of an award dated 29th September 2017, (herein the **"First Application"**), and that dated 25th November 2020, by Eric Okondo Omanga t/a Cidai Firm brought against Jimmy Mutuku Mwithi seeking to stay the first application and extend time for filing an application to set aside the award (herein the **"Second Application"**).

2. The first application has been brought under Section 36 of the Arbitration Act, Cap 49, Laws of Kenya, rules 4 and 5 of the Arbitration Rules 1997, Section 59 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules, 2010. The applicant in this application seeks an order to recognize, adopt and enforce the arbitral award dated 29th September, 2017.

3. The application is premised on the grounds on its face and the applicant's affidavit sworn on 16th March, 2020. The grounds are, that; parties entered into a joint venture agreement through a Memorandum of Understanding **(MOU)** executed on 2nd and 3rd September. Paragraphs 13.3, 13.4 and 13.4 of the MOU provided for arbitral clauses to govern any dispute that would arise between the parties.

4. The applicant states that contrary to those clauses, the respondent instituted ***Kajiado PMCC No. 2 of 2016, Eric Okondo Omanga t/a Cidai Farm v Jimmy Mutuku Mwithi t/a Oasis Farm***, which was stayed pursuant to orders issued in ***Kajiado HCCA No. 3 of 2016-Jimmy Mutuku Mwithi t/a Oasis Farm v Erick Okondo Omanga t/a Cidai Farm*** and the matter was referred to arbitration. Subsequently, an award was made in the applicant's favor on 29th September, 2017, and 30 days had lapsed without the respondent applying to set aside the award. No appeal or objection was also filed against that arbitral award.

5. In the affidavit by Jimmy Mwithi Mutuku, he reiterates the facts and the grounds on the face of the application and urges the court to grant the orders sought.

6. The respondent has filed a replying affidavit sworn on 25th November, 2020, opposing the application and urges for its dismissal with costs. The respondent admits that they entered into an MOU and institution of Kajiado SPMCC No. 2 of 2016, and Kajiado HCCA No. 3 of 2016, as well as the resultant arbitral proceedings before Dr. Kibaya Imaana Laibuta, who delivered the award dated 29th September 2017.

7. The respondent deposes that the final award by the arbitral tribunal was a nullity and unenforceable for the reasons that; no mediation had been attempted prior to the arbitration as provided for in the MOU; that the arbitral tribunal proceeded without jurisdiction rendering the award void, unenforceable and against public policy and that this court lacks jurisdiction to recognize, adopt or order enforcement of the award. According to the respondent, recognizing, adopting and enforcing the award will be a breach of the MOU, the Arbitration Act, the

Constitution and will be against public policy.

8. It is the respondent's case that the final award was at variance with the pleadings and evidence before the arbitrator and the arbitrator's findings were not based on any law or logic. He further stated that the arbitral tribunal substituted the provisions of the MOU with its own provisions thus arriving at an award outside the MOU and the Law. The unlawful substitution led to its conclusion that there was no variation of the agreement between the applicant and the respondent thereby condemning him to pay Kshs. 4, 180,000 to the applicant.

9. The respondent claims that based on the foregoing, the arbitrator went against public policy by relying on a disputed article " authoritative article" which neither had an author nor produced by the maker; ignoring the provisions of the MOU which described the shareable revenue as the actual revenue generated from the farm and substituting it with its own provisions; ignoring his evidence including the admissions by the applicant resulting into an erroneous decision; and, declining to exercise its jurisdiction to award him damages as prayed in the counterclaim, even after arriving at a conclusion that the applicant(claimant) had destroyed his farm, infrastructure and movable property on the land contrary to the provisions of the MOU.

SECOND APPLICATION

10. The second application has been brought under Article 50 (1) of the Constitution, sections 3A, 1A, and 1B of the Civil Procedure Act, section 35 (1), (2), (3) and section 40 of the Arbitration Act, seeking an order for enlargement of time to file an application to set aside the final award dated 29th September, 2017.

11. This application is premised on the grounds on the face of the application and on the respondent's affidavit sworn on 25th November, 2020. The grounds are, that; he received the final award from the arbitrator on 19th November, 2020 and being aggrieved, he is keen to have it set aside; the award offends public policy; the applicant has sought recognition and enforcement of the award; although the award was delivered on 29th September, 2017, he got it on 19th November, 2020 and was not notified by the respondent when he received it; he had fallen into financial difficulties and could not afford the arbitrator's fees to enable him get the award and unless his application is allowed, he will lose the opportunity to set the award aside.

12. In his affidavit, Eric Okondo Omanga reiterates the facts and the grounds on the face of the application, and deposes that he was within the stipulated timelines for filing an application to set aside the arbitrator's decision having received it on 19th November, 2020. He also reiterates the reasons in his replying affidavit and urges that his application be allowed.

13. The respondent to this application has filed a replying affidavit and a supplementary affidavit both sworn on 10th February, 2021. He deposes that the application is an abuse of the court process and is an appeal disguised as an application to set aside the final award. According to him, parties had agreed and settled on the mode of resolving any dispute arising from the MOU; that clause 13(4) of the MOU embodied a binding arbitration clause in case negotiations and mediation failed.

14. He deposes that a dispute arose in relation to the MOU and the respondent instituted Kajiado PMCC No.2 of 2016 which was referred to arbitration on 26th February, 2016 by virtue of the court's order in Kajiado HCCA No. 3 of 2016. Subsequently, both parties wrote to the Chairman of the Chartered Institute of Arbitrators and Dr. Kibaya I. Laibuta was appointed the arbitrator vide letter dated 5th January, 2017.

15. He further deposes that both parties voluntarily submitted to the process by submitting their respective papers; the matter was heard and an award was made on 29th September, 2017, in his favour. He states that parties were notified that the award was ready and asked to pay the remaining fees balance so as to collect the award. Despite several remainders the applicant herein ignored to pay only to wake up after the application for enforcement on 19th November, 2020.

16. He states that this applicant never exercised his right to set aside the award within the statutory period and, therefore, this court has no jurisdiction since the time to set aside the award lapsed on 2nd January, 2018. According to the respondent, there is no provision for law allowing extension of time. He asserts that the provisions on which the respondent's application is premised, cannot be relied on for any relief in light of the limitation set by section 10 of the Arbitration Act.

17. It is his case, that the application violates the rules of natural justice as the arbitrator was neither impleaded as a party nor served with the application. He deposes that the applicant having submitted himself to the arbitrator's jurisdiction including by filing defence and counterclaim, the issue of jurisdiction ought to have been raised at the earliest opportunity as required by section 17 of the Arbitration Act and, therefore, the applicant is estopped from raising the issue now.

18. According to the respondent, the award does not offend public policy in any way; the arbitrator did not rewrite the contract between the parties as alleged but only interpreted it in the manner parties intended to be bound as he was guided by parties' pleadings and evidence. The arbitrator was also right in interpreting clause 6(2) of the MOU that any agreement purporting to vary the terms of the MOU was to be in writing and executed by both parties. The applicant had no basis of challenging the authoritative article as both parties agreed to rely on it during the hearing. In any case, the respondent stated, the applicant's report by Mr. Kimani was also considered by the arbitrator in calculating the shareable revenue and arriving at the award.

19. The respondent further deposes that the award contained matters that were within the scope of the arbitral award as the award was arrived at after consideration of the terms of the MOU and the evidence of both parties. He states that the award was a result of court mandated arbitration and, therefore, the applicant has not met the principles for setting aside the award under Order 46 of the civil procedure rules.

20. Both applications have been disposed of through written submissions. The applicant in the first application has filed submissions on 22nd February, 2020 for both applications. He argues that this court lacks jurisdiction to enlarge time and relied on section 10 of the Arbitration

Act that prohibits intervention by courts in arbitration matters. He also relies on Article 159(2) (a) and (b) of the Constitution that justice be dispensed without delay and propagates for arbitration as one of the modes of alternative dispute resolution.

21. The applicant also relies on ***Nyutu Agrovet Limited v Airtel Networks Limited*** [2015] eKLR and section 32A of the Arbitration Act on the finality of arbitration awards as well as ***Monique Oraro v AAR Insurance Co. Ltd*** [2019] eKLR on limitation of court's intervention in arbitration matters.

22. This applicant further argues that this court lacks jurisdiction by virtue of section 35 (3) of the Arbitration Act to enlarge statutory timelines. Reliance has also been placed on section 10 of the Arbitration Act given that arbitral proceedings are governed by the Act and the rules made thereunder. He relies on ***Anne Mumbi Hinga v Victoria Njoki Gatharu*** [2009] eKLR; ***Mareco Limited v Mellech Engineering & amp; Construction Limited*** (2019) eKLR and ***Dinesh Construction Company (K) Limited v Kenya Sugar Research Foundation*** [2018] eKLR.

23. According to this applicant, parties submit to arbitration due to the principles of expeditious and timely disposal of disputes with finality. He cites ***Capture Solutions Limited v Nairobi City Water and Sewerage Company Limited (supra)*** and argues that the respondent's contention that he was within the timelines to challenge the award was not true since the award was issued on 2 nd October, 2017, but he waited for over three (3) years to collect the award.

24. He also relies on ***University of Nairobi v Multiscope Consultancy Engineers Limited*** [2020] eKLR on the interpretation of section 35 (3) of the Arbitration Act that the date of notification is deemed to be the date of delivery and receipt of the award.

25. The applicant maintains that the respondent has not met the threshold for setting aside the award and relies on section 35(2) of the Act which sets out the grounds for setting aside an arbitral award.

26. Regarding jurisdiction, he argues that the MOU provided for resolution of disputes, procedure to be adopted in referring the dispute for arbitration and the mandate of the arbitrator. He asserts that the arbitral tribunal can rule on its own jurisdiction, including on any objections with respect to the existence of and validity of an arbitration agreement or that he has extended his jurisdiction.

27. According to the applicant, any party aggrieved by the decision of the arbitrator on a preliminary objection, would be at liberty to appeal against such a decision within thirty days. He also argues that the issue of jurisdiction ought to have been raised at the earliest opportunity, which the respondent did not do. He relies on section 17 (1), (3) and (6) of the Arbitration Act, and decisions in ***Justus Nyang'oya v Ivory Consult Limited [2015]*** eKLR and ***Rentworks East Africa Limited v Keya Airways Limited*** [2020] eKLR.

28. Regarding public policy, the applicant argues that the award did not offend public policy and relies on ***Cape Holdings Ltd v Synergy Industrial Credit Limited*** [2016] eKLR on what amounts to public policy, and which must be considered alongside the principle of finality. He again relies on ***Richardson v Mellish*** [1824] 2 Bing 228***; Christ For All Nations v Apollo Insurance Co. Limited (supra)***; and, ***Kenya Shell Limited v Kobil Petroleum Limited*** (Civil Appeal No. 57 of 2006-Nairobi).

29. The applicant further argues, relying on ***Mahau Limited v Villa Care ML (***Misc. Civil App.No. 216 of 2018) [2019] eKLR, that under section 35, the court does not exercise appellate jurisdiction. He maintains that errors of facts or law cannot be a ground for setting aside an award and relies on ***DB Shapaya and Co. ltd v Bish International BV (2)*** [2003] 2 EA 403.

30. It is the view of the applicant that the respondent has not met the threshold for setting aside the award on grounds of public policy, and relies on ***Cape Holding Ltd v Synergy Industrial Credit Limited (supra)***,; **Movies For Your Limited v Commercial Development Corporation** (2017) eKLR and ***National Oil Corporation of Kenya Ltd v Pasko Petroleum Network Ltd*** (2014) eKLR.

31. On whether the award should be adopted and enforced, he relies on section 36 and 37 of the Arbitration Act, and **Tanzania National Roads Agency v Kudan Sigh Construction Ltd** (Misc. Civil application No. 171 of 2012) and ***Nyutu Agrovet Ltd v Airtel Networks Ltd*** (supra) and urges the court to allow his application, recognize and adopt the award as an order of the court.

32. The respondent has filed two sets of submissions dated 20th April, 2021 and 4th March, 2021 for each application. He argues, first; that the arbitrator proceeded with the matter without jurisdiction since the matter did not go through negotiation and mediation first as was provided for in the MOU. He further argues that this court also could not have referred the matter to arbitration before negotiations and mediation processes and, therefore, the award was a nullity and ought to be set aside. He relies on ***Eldoret Municipal Council v Rural Housing Estates Ltd*** [2002] eKLR and ***Equity Bank Limited v Adopt –A- Light Limited*** [2014] eKLR.

33. The respondent also submits that the award was against public policy. He argues that the arbitrator rewrote the contract for the parties given that clause 6(2) did not provide for variation of the revenue sharing. Such an action was illegal, and led to an erroneous conclusion and unfairly condemned him to pay Kshs. 4,180,000 to the applicant. He relies on ***Equity Bank Limited v Adopt-A- Light Limited (supra), Kenya National Highways Authority v Pride Enterprises Limited & another*** [2020] eKLR and ***Cape Holdings Ltd v Synergy Industrial Credit Limited*** [2016] eKLR where the court cited ***Christ For All Nations v Apollo Insurance Company Limited*** (NRB HCC No. 477 of 1999) for the definition of public policy**.**

34. He contends that the arbitrator relied on evidence that was objected to **(Authoritative Article)** which was neither dated nor its author disclosed and was controverted by all witnesses who testified during the hearing. Such a decision he argues, offends public policy, is a nullity and ought to be set aside.

35. The respondent goes on to argue that he was within time to file his application for setting aside the award. He submits that he received the award on 19th November, 2020 and filed his application on 3rd December, 2020 and, therefore, he was within the stipulated timeline. He

further argues that it was not clear when the applicant received the award as his Notice of Motion is dated 18th May, 2020 and the supporting affidavit sworn on 16th March, 2020. He relies on section 35(3) of the Arbitration Act, 1997 and ***Dewdrop Enterprises Ltd v Harree Construction Ltd*** [2009] eKLR.

36. Regarding jurisdiction to enlarge time for filing application to set aside the award, he submits that the court has jurisdiction. He maintains that he has given sufficient reasons why he had not filed the application within the stipulated timelines. According to him, by virtue of Articles 48 and 50 of the Constitution, he is entitled to a fair hearing. He also relies on ***Capture Solutions Limited v Nairobi City Water and Sewerage Company Limited*** [2020] eKLR to argue that this court has unfettered discretion to extend time although it must be exercise judiciously.

37. He also relies on ***Nicholas Kiptoo Arap Salat v IEBC and 7 others,*** [2014] eKLR, which set out the factors to be considered. He urges the court to allow his application for extension of time and dismiss the applicant's application for adoption and recognition of the award with costs.

Determination

38. I have considered the applications, responses thereto and submissions by parties. I have also considered the decisions relied on in support of parties' respective positions. Since there are two applications before court, one seeking to recognize and adopt the award, and the other to extend time to apply to set aside the same award, the proper approach is to determine the application for extension of time first because the decision on that application, will determine the fate of the application for recognition and adoption of the award.

Second Application.

39. This application seeks extension of time to apply to set aside the award dated 29th September 2017. The application is dated 25th November 2020 and filed on 2nd December 2020. It has been brought under Article 50 (1) of the Constitution, sections 3A, 1A, 1B of the Civil Procedure Act and sections 35 (1) (2) and (3) and 40 of the Arbitration Act. The more appropriate provision here is section 35(3of the Arbitration Act although that does not mean the other provisions are less important.

40. The applicant has raised many issues in his application. However, the core issue is whether the court should enlarge time within which to file an application to apply to set aside the award. It is only after such time is enlarged that the applicant can raise those issues in trying to persuade the court that the award should be set aside.

41. Section 35 (2) provides grounds under which the Court may set aside an arbitral award. Sub section (3) sets the time line within which an application to set aside an award should be made. It states:

> **An application for setting aside the arbitral award may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award, or if a request had been made under section 34 from the date on which that request had been disposed of by the arbitral award.**

42. An application to set aside an award should be made within three months after receiving the award. The applicant states that he received the award on 19th of November 2020 and filed his application on 2nd December 2020. He also states that he is within time to file the application to set aside the award because the section grants a period of three months within which to do so. If that be true, that he is within time, why then does he seek enlargement of time to fie the application to set aside the award?

43. The application has been opposed on the ground that the award was made on 29th September 2017 and that parties had been notified of the award being ready and asked to collect copies on payment of the balance of the arbitrator's fees. The applicant does not dispute this fact and he seems to contradict himself. Whereas he states in his affidavit that he received the award on 19th November 2020 and filed the application within time, on 2nd December 2020, he states in his submissions that he has given sufficient reasons why he did not file the application to set aside the award on time and that this court should, therefore, enlarge time, a jurisdiction it has. If the applicant received the award on 19th November 2020 he did not have to file an application to enlarge time to apply to set aside the award. So when this applicant received the award appears to be in doubt going by his own depositions and submissions.

44. On the other hand, the respondent to this application argues that they were notified of the award in September 2017 and the award was issued on 2nd October 2017 and, therefore, the time for applying to set aside the award lapsed in January 2018. He also argues that section 35(3) does not give the court jurisdiction to enlarge time.

45. Section 35(3) sets the timeline within which a party may apply to set aside the award. It does not state that the court may enlarge time within which to file such an application. However, whether or not to extend time is a matter within the discretion of the court but which must be exercised judicially, taking into account the circumstances of each case.

46. The issue in this application is when parties received the award, and whether the applicant has justification for seeking enlargement of time to apply to set aside that award. Section 35(3) states that an application to set aside the award should be made not later than three months from the date of receipt of the award. The operative word here is from the "date of receipt." The date of receipt is the date when time begins to run.

47. The award was signed and ready for collection on 29th September 2017 and parties were notified that the award was ready for collection on 2nd October 2017. According to the respondent, he collected the award then but the applicant argues that he received the award on 19th November 2020 and, therefore, time should start running from thence. The question is when should the award be deemed to have been

received.

48. This issue in not new. In ***University of Nairobi v Multiscope Consultancy Engineers Limited*** (supra), the court considered the import of section 35(3) with regard to when an award is deemed to have been received by a party; and after considering a number of decision, the court stated:

> **[T] statute does not require the arbitral tribunal to dispatch or send a signed copy to each party. For that reason, delivery happens when the arbitral tribunal either gives, yields possession, releases or makes available for collection a signed copy of the award to the parties. Actual receipt of the signed copy of the award by the party is not necessary. So that when the arbitral tribunal notifies parties that a signed copy of the award is ready for collection then, the date of notification is deemed to be the date of delivery and receipt of the award because it is on that date that the tribunal makes the signed copy available for collection by the parties.**

49. I agree with this exposition of the law. In arbitral proceedings, parties are responsible for the arbitral tribunal's fees and costs and parties usually pay fees before collection of a copy of the signed award. Should a party delay in paying fees, that party cannot then argue that the date notified of the availability of the award is not the date of its publication or receipt because he is responsible for the delay to collect the award.

50. The applicant argues that it had financial difficulties and could not, therefore, afford to pay the arbitral tribunal's fees and obtain the award on time. This cannot be blamed on the arbitral tribunal or the respondent. The arbitrator made the award available and signed it ready for collection by parties, subject to payment of the balance of fees, and it was up to the parties to pay and collect their respective copies. The respondent states that the award was available on 2nd October 2017 and there was no reason why the applicant did not collect his copy as well.

51. On delay to pay fees thus delay to obtain a copy of the award, the court in the ***University of Nairobi v Multiscope case*** stated:

> **Should it be any different because the arbitral tribunal has withheld the delivery of the award because of none payment of fees and expenses (Section 32B (3)?...With respect I am unable to agree. Once the arbitral tribunal notifies the parties that the award is ready for collection upon payment of fees and expenses, then delivery will have happened as it is upon the parties to pay the fees and expenses. This is because the only obligation of the arbitral tribunal is to avail a signed copy of the award, of course subject to payment of fees and expenses which is an obligation of the parties. The tribunal having discharged that obligation, then delivery and receipt of the signed copy of the award is deemed because any delay in actual collection can only be blamed on the parties. Default or inaction on the part of the parties does not delay or postpone delivery.**

52. The applicant waited from October 2017 when the award dated 29th September 2017 was made available for collection to 25th November 2020 and then wants to argue that he was within time to file his application to set aside the award, or that the court should enlarge time for him to file an application to set aside the award. Accepting such a reason and or argument, would lead to a travesty of justice and an antithesis of Article 159 that justice be dispensed without delay.

53. The applicant has relied on ***Nicholas Kiptoo Arap Salat v Independent Electoral and Boundaries Commission & 7 others*** (supra), that the court has un fettered discretion to allow his application. In that case Supreme Court stated considerations a court should take into account in making a decision whether or not to enlarge time. One of the conditions is that the party seeking extension of time must satisfy the court on the basis for seeking the extension, and whether there is a reasonable explanation for the delay. The Court stated:

> **Time is a crucial component in dispensation of justice, hence the maxim: Justice delayed is justice denied. It is a litigants' legitimate expectation where they seek justice that the same will be dispensed timeously. Hence, the various constitutional and statutory provisions on time frames within which matters have to be heard and determined. Time is of more essence in election matters where the people's sovereign power to elect their legal representatives is involved. It is with this recognition that the Constitution provide for the time frames within which election matters have to heard and determined…. A party may however, encounter some delay and the time within which he was to perform an act lapses. At Common Law, equity developed in the courts of Chancery Division to check the excess of common law. If one showed that he had a bona fide cause of action and time had lapsed, but was constrained to pursue within time that cause, because of some compelling reasons, the courts of the Chancery Division could intervene and indulge such a person if established that he was not at fault**. (Emphasis)

54. Even on the basis of the above decision, the applicant has not shown that he was not at fault to persuade this court to act in his favour. I am not persuaded that this applicant has made a case for the prayer he seeks to enlarge time.

First Application.

55. The first application has been brought under section 36 of the Arbitration Act, and rules 4 and 5 of the Arbitration Rules 1997 among other provisions, seeking an order to recognize, adopt and enforce the arbitral award dated 29th September, 2017. The matter was referred to arbitration by an order of this court issued in ***Jimmy Mutuku Mwithi t/a Oasis Farm v Erick Okondo Omanga t/a Cidai Farm*** (HCCA No. 3 of 2016).

56. Parties agreed on the appointment of the arbitral tribunal and subsequently the matter was heard and an arbitral award made on 29th September and issued on 2nd October 2017 to the 1st applicant. The respondent to this application has opposed the application on grounds the court has already considered earlier.

57. The application is premised on the grounds on its face and the applicant's affidavit sworn on 16th March, 2020. The grounds are, that; parties entered into a joint venture agreement through an **MOU** executed on 2nd and 3rd September. Paragraphs 13.3, 13.4 and 13.4 of the **MOU** provided for arbitral clauses to govern any dispute that would arise between the parties. The applicant states that contrary to those clauses, the respondent instituted ***Kajiado PMCC No. 2 of 2016, Eric Okondo Omanga t/a Cidai Farm v Jimmy Mutuku Mwithi t/a Oasis Farm***, which was stayed pursuant to orders issued in ***Kajiado HCCA No. 3 of 2016-Jimmy Mutuku Mwithi t/a Oasis Farm v Erick Okondo Omanga t/a Cidai Farm*** and the matter was referred to arbitration. Subsequently, an award was made in the applicant's favor on 29th September, 2017, and 30 days had lapsed without the respondent applying to set aside the award. No appeal or objection was also filed against that arbitral award.

58. The fact of the matter remains that the award has not been challenged or set aside and no appeal is pending. Section 36 of the Act states that a domestic arbitral award, is to be recognized as binding and, on application to court in writing, it shall be enforced unless the court refuses to recognize it on grounds set out in section 37.

59. The award was made pursuant to the matter referred for arbitration by the court on the basis of the arbitration clause in the MOU entered into between the parties. The applicant has attached a certified copy of the award dated 29th September 2017 and a copy of the **MOU** entered between the parties herein and which was the basis for referring the matter to arbitration, thus satisfying the requirements under section 36 of the Act.

Disposition

60. Having considered the twin applications, responses and submission as well as the law and the decisions relied on by parties, and upon giving due consideration to all those, the conclusion I come to is that the application dated 18th May 2020 has merit and is allowed.

61. The arbitral award dated 29th September 2017 is hereby recognized and adopted as an order of the court for purposes of enforcement. The applicant shall have costs of the application.

62. On the other hand, the application dated 25th November 2020, has no merit. It is declined and dismissed with costs.

DATED, SIGNED AND DELIVERED AT KAJIADO THIS 30TH DAY OF JULY 2021

E C MWITA

JUDGE