



**Easy PC Kenya Limited v County Government of Machakos (Commercial Suit E019 of 2021) [2021] KEHC 54 (KLR) (Commercial and Tax) (23 September 2021) (Ruling)**

Neutral citation: [2021] KEHC 54 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**COMMERCIAL SUIT E019 OF 2021**  
**DAS MAJANJA, J**  
**SEPTEMBER 23, 2021**  
**N THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF AN ARBITRAL AWARD**  
**BETWEEN**  
**EASY PC KENYA LIMITED ..... APPLICANT**  
**AND**  
**COUNTY GOVERNMENT OF MACHAKOS ..... RESPONDENT**

**RULING**

1. The Applicant has moved the court by the Chamber Summons dated 23<sup>rd</sup> June 2021 made under Order 36(1) of the *Arbitration Act*, 1995 seeking recognition and enforcement of the Final Award published by Mr George Murigu on 25<sup>th</sup> February 2021 (“the Award”). The application is grounded on the affidavit of Adam Maina Karuga, the Applicant’s Operation Manager, sworn on 23<sup>rd</sup> June 2021.
2. The Respondent opposed the application by way of Grounds of Opposition sworn on 15<sup>th</sup> July 2021. It states that the application is misconceived, misguided and an abuse of the court process. That it is against public policy as it seeks to enforce and award payments over works that were not done. It states that the Applicant seeks to benefit from public coffers, whereas no proper legal or enforceable contracts were ever entered between the parties herein to warrant enforcement by this court.
3. When the matter first came up for direction on 5<sup>th</sup> July 2021, I directed the Respondent to file its Replying Affidavit and or application to set aside the Award if it wished to do so. From the record, the matter was mention on 18<sup>th</sup> July 2021 and 28<sup>th</sup> July 2021. When it came up for hearing on 22<sup>nd</sup> July 2021, counsel informed the court that he did not have any instructions to file a response by way of an affidavit and he was content to rely on the grounds of opposition.



4. It is true the court may decline to enforce an award if it contrary to the public policy of Kenya under section 37(1)(b)(ii) of the Arbitration Act. However, the factual and legal basis for the court to reach that conclusion must be set out in a deposition. Without a pointed assault on the award, bare allegations in the grounds of opposition are, in the circumstances of this case, insufficient and without merit.
5. I have also looked at the Award and it shows that the Respondent raised the issue of jurisdiction of the Arbitrator but this was resolved by a ruling dated 19<sup>th</sup> October 2018 which was not challenged in accordance with section 14 of the Arbitration Act. Thereafter the Arbitrator framed three issues for determination. First, whether there existed valid contracts between the parties. Second, whether the Applicant was entitled to KES. 12,513,920.00 under the subject contracts and lastly, who should bear the costs of the proceedings. The Arbitrator considered all the issues and evidence and ultimately came to the conclusion as set out in the Award. I do not see any violation of the public policy of Kenya.
6. In order to succeed, the Applicant must comply with the provisions of section 36(3) of the Arbitration Act which state as follows;
  36. Recognition and enforcement of awards
  - (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.
7. For all intents and purposes the application has not been opposed. The time limited for applying for setting aside the award has now elapsed and the Applicant has complied with section 36 of the Arbitration Act. Consequently, I allow the Chamber Summons dated 23<sup>rd</sup> June 2021 and order as follows:
  - a. **The Final Award issued on 25<sup>th</sup> February 2021 by the arbitrator, George Murigu, be and is hereby recognized as a judgment of this court and a decree shall issue accordingly.**
  - b. **Leave be and is hereby granted to the Applicant to enforce the decree.**
  - c. **The Respondent shall bear the costs of this application assessed at KES. 50,000.00.**

**DATED AND DELIVERED AT NAIROBI THIS 23<sup>RD</sup> DAY OF SEPTEMBER 2021.**

**D. S. MAJANJA**

**JUDGE**

Court Assistant: Mr M. Onyango

Mr Wambugu instructed by Wambugu Kariuki and Associates Advocates for the Applicant.

Mr Mutua instructed by Mutua Nyongesa Muthoka Advocates for the Respondent.

