



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISCELLANEOUS SUIT NO. 232 OF 2014

JOSEPH NJOGU NJUGUNA.....PLAINTIFF

VERSUS

KEVIN LEWIS SAFARI.....DEFENDANT

RULING NO. 2

1. The application before me was for the recognition of an arbitral award as a Judgement of this court.
2. The arbitral award is dated 21st January 2014. Pursuant to the said award, the claimant was awarded Kshs. 10,940,000/-. The claimant was also awarded interest and the costs of the arbitration.
3. Following the granting of the award, the respondent lodged an application dated 16th April 2014, through which he sought to have the award set aside.
4. The gist of his reasons for seeking the setting aside of the award was that the arbitrator had condemned him without first giving him an opportunity to present his case.
5. A deeper look into his complaint revealed that it was the advocate for the respondent who, although duly served, had failed to either inform his client about the hearing date, or to attend the proceedings on behalf of the respondent.
6. On 2nd June 2015, the court dismissed the respondent's application. In the said Ruling, the court held that it would be unreasonable to set aside the award on the grounds that the advocate for the respondent had failed his own client.
7. Neither the arbitrator nor the claimant bore any responsibility for the failure by the respondent and the respondent's advocate to take part in the proceedings.
8. The court, in rejecting the respondent's application, also noted that the respondent had not demonstrated the steps that he had taken to safeguard his legal rights when the matter was before arbitrator. The court found that the respondent had not been diligent in the pursuit of his own case. He had given instructions to his advocate, and thereafter simply expected the advocate to file pleadings and also to prosecute his case.
9. After the court rejected the respondent's application, the claimant canvassed his application, for the recognition of the award.
10. In answering the claimant's application, the respondent re-stated the case which he had put forward when he was asking the court to set aside the award.
11. The respondent cited the following decisions to support his case;
 - a. ***EVANSON WAMBUGU GACHUGI Vs SIMON WAINAINA GATWIKI & 2 OTHERS [2014] e KLR;***

- b. ***CENTURION ENGINEERS & BUILDERS LTD Vs KENYA BUREAU of STANDARDS [2014] e KLR; and***
c. ***KENYA AGRICULTURAL & LIVESTOCK RESEARCH ORGANIZATION Vs NJAMA LTD [2015] e KLR.***

12. In his view, he has a strong defence and therefore, he ought to be allowed to present his said defence before a final determination can be made. The respondent believes that justice can only be done if he is allowed to put forward his defence.
13. It is clear to me that the respondent has not yet accepted the fact that the arbitrator's award constitutes a determination of the dispute between him and the claimant.
14. I wish to make it crystal clear to the respondent that the award of the arbitrator constituted the determination of the dispute.
15. Following the pronouncement of the arbitral award, the respondent exercised his right, by canvassing an application to set aside the award.
16. After the court rejected the application to set aside the arbitral award, there was no more room for the respondent to challenge the award.
17. The respondent has not demonstrated that there were any grounds, in law, for refusal of recognition of the arbitral award.
18. Section 37 (1) of the Arbitration Act stipulates the only grounds upon which the court can refuse to recognize an award: And the respondent has not brought his case within the purview of that section. Accordingly, there is no basis for the court withholding recognition of the award.
19. I therefore grant the orders sought in the application dated 13th May 2014. The award by the sole arbitrator, **HON. KYALO MBOBU**, dated 21st January 2014 is hereby recognized as binding and enforceable as a judgement of this court.
20. A Decree will therefore issue in accordance with the arbitral award.
21. Finally, the costs of the application are awarded to the claimant.

DATED, SIGNED and DELIVERED at NAIROBI this 19th day of January 2016.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Muchoki for the Plaintiff

Mungai for the Defendant

Collins Odhiambo – Court clerk.