



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND ADMIRALTY DIVISION**  
**MISC. CIVIL APPLICATION NO. 423 OF 2015**

**SAMOW EDIN OSMAN.....APPLICANT**

**VERSUS**

**RASHID BUKURA SOMO.....RESPONDENT**

**IN THE MATTER OF AN APPLICATION TO SET ASIDE THE ARBITRAL AWARD MADE  
ON**

**15<sup>TH</sup> APRIL 2015 AND PUBLISHED ON 7<sup>TH</sup> AUGUST 2015 BY KIHARA MURIITHI, FCIARB**

**BETWEEN**

**RASHID BUKURA SOMO.....CLAIMANT**

**VERSUS**

**SAMOW EDIN OSMAN.....RESPONDENT**

**RULING**

1. Before the court are two applications. The first in time is a Notice of Motion dated 28<sup>th</sup> September, 2015 by Samow Edin Osman (hereinafter the Applicant). The same seeks for the Court to set aside the final arbitral award made by the arbitrator on 15<sup>th</sup> April, 2015 and published on 10<sup>th</sup> August, 2015. The second one is a Chamber Summons by Rashid Bukura Somo (hereinafter the Respondent) dated 30<sup>th</sup> October, 2015. It seeks for the enforcement of the award as a decree of the Court.

2. My view is that when applications are presented together, the Court should determine the one for setting aside the award first, and then determine the one for recognition and enforcement of award afterwards. The said order and sequence makes sense as the decision in the application under section 35 will determine the course of the application for recognition and enforcement of award. If the Court were to commence with the hearing of the one seeking the enforcement of the award, the Court may find itself in an embarrassing situation of making two contradictory decisions. Accordingly, I propose to deal with the Notice of Motion dated 28<sup>th</sup> September, 2015 first.

## **Background**

3. By an agreement for sale of land dated 20<sup>th</sup> May, 2008, the Respondent purchased LR No. 209/1853 and 209/1854 in Nairobi County (hereinafter referred to as the “suit land”). Thereafter the parties entered into an agreement dated 31<sup>st</sup> May, 2008 where the Respondent covenanted to pay Kshs. 22,500,000/= in consideration of the services rendered in the sale of the suit land.
4. The Respondent’s case as per the arbitral proceedings, was that the Applicant partly paid the compensation due of Kshs. 10,000,000/= and left a balance of Kshs. 12,500,000/= hence giving rise to the dispute. The same was referred to Arbitration, wherein Mr. Kihara Muruthi was appointed as the sole Arbitrator and proceeded to hear and determine the dispute.
5. The final award was published on 10<sup>th</sup> August, 2015 where the Applicant was to pay to the Respondent a sum of Kshs. 12,500,000/= together with interest from 20<sup>th</sup> August, 2008 until payment in full and also pay the costs of the arbitral proceedings that were to be assessed later
6. Dissatisfied with the award, the Applicant filed a Notice of Motion dated 28<sup>th</sup> September, 2015 asking the Court to set aside the arbitral award made by the arbitrator. The application is expressed to be brought under Section 35 (1), 35(2) (a)(i) & (b)(ii) and section 37 of the Arbitration Act, Order 51 Rule 1 of the Civil Procedure Rules, Article 10, 165(6) of the Constitution of Kenya as well as sections 1A,1,3,3A and 63(e) of the Civil Procedure Act.
7. The application is supported by the Affidavit of the applicant sworn on 25<sup>th</sup> September, 2015. The affidavit sets out the principal grounds for the application and the same can be summarized as follows. That the finding by the Arbitrator that the agreement between the parties was on forfeiture of a right whereas the same was expressly stated as an agreement for services rendered, amounted to the Arbitrator trying to re-write the agreement between the parties.
8. It was also contended that the Arbitrator failed to appreciate the fact that the Applicant did not have the capacity to read or write the English language at the time of executing and therefore lacked the capacity to enter in the agreement. That further there was breach of trust by the advocate of the Applicant who went contrary to the Applicant’s instruction, an issue that the Arbitrator did not consider.
9. It was also the Applicant’s complaint that the arbitrator exhibited open bias against him and hence did not treat the parties to the arbitral proceedings equally, contrary to section 19 of the Arbitration Act. The Applicant further contended that the arbitrator mis-conducted the hearing when he failed to adjudicate upon the real issues in controversy before him and instead chose to go outside the agreement between the parties when he held that the contract was in regard to the right of forfeiture as opposed to the a contract for services rendered.
10. It was also the Applicant’s case that the arbitrator did not consider the written submissions filed by his advocate and was therefore not accorded a fair opportunity to be heard which is contrary to public policy. That further, the Arbitrator failed to call upon the parties to frame issues of determination, thus failing to address the real issues in controversy with regard to the agreement between the parties. Therefore, it was the Applicant’s contention that the arbitral tribunal failed to address his mind to the real fact in issue and questions of law brought out in his submissions.
11. The Applicant additionally stated that the arbitrator’s award violates public policy of Kenya as the same was made in complete disregard to section 3 of the Law of Contract Act, section 2 of the Estate Agents Acts, Cap 533 and section 36,43 and 44 of the Land Registration Act, No. 3 of 2012. That essentially, the award is founded on glaring errors of law and it would be in the interest of justice if the same were to be set aside. The Applicant therefore urged the court to grant the prayers sought in the application with costs.
12. In opposing the application, the Respondent filed a replying affidavit sworn on 30<sup>th</sup> October, 2015.

According to him, in the year 2008 he was in the process of buying the suit property and negotiated the purchase price with its owners to a sum of Kshs. 100,000,000/=. That subsequently the applicant approached him and requested him to forfeit his rights as the purchaser of the property to enable him buy it instead.

13. This request was agreed to on condition that the Applicant would pay the Respondent a sum of Kshs. 22,500,000/= on or before 20<sup>th</sup> August, 2008. This arrangement was reduced into writing signed by both parties. The vendors of the suit property also agreed to sell the suit premises to the Respondent and the properties were subsequently transferred and registered in the Applicant's name.

14. The Respondent further stated that on 25<sup>th</sup> August, 2008, the Applicant paid him 10,000,000/= of the agreed Kshs. 22,500,000/= leaving a balance of Kshs. 12,500,000/= which remains due to date. It was the contention of the Respondent that despite several efforts and requests for the Applicant to pay the outstanding sum, the same was not paid prompting him to refer the matter for arbitration. A sole Arbitrator was thereafter appointed where the Respondent filed his statement of claim dated 4<sup>th</sup> October, 2015 while the Applicant filed his Defence and Counterclaim dated 22<sup>nd</sup> October, 2013.

15. After the matter took off for hearing several witnesses were called to testify, including the Advocate, Mr. Hassan Lakicha, who drafted the agreement in question. In his testimony, the said Hassan Lakicha confirmed that the parties expressed the understanding that the sum of Kshs. 22,500,000/= was paid in consideration of an interest being passed from the Respondent to the Applicant. After the analysis of the evidence, the Arbitrator found in favour of the Respondent and that he was indeed entitled to Kshs. 12,500,000/=.

16. The award was made on 15<sup>th</sup> April, 2015 and on the 17<sup>th</sup> April, 2015 the parties were notified that the same was ready for collection. Accordingly, it was the Respondent's contention that the application was time barred as it was brought after the lapse of three months contrary to section 35 (3) of the Arbitration Act.

17. The Respondent further contended that the court did not have the jurisdiction to consider and make determination on the issues raised by the Applicant, as the said issues amounted to an appeal against the decision of the Arbitrator. In buttressing this point, the Respondent contended that the Applicant was trying to reopen the inquiry conducted by the Arbitrator and asking the court to overturn the factual findings by the Arbitrator.

18. The Respondent further pointed out that the award was not contrary to public policy as claimed by the Applicant. That further the arbitrator was not biased and that in any case, if the Applicant was aggrieved by any apparent bias, he should have applied under section 14 of the Arbitration Act to have the same addressed. In the absence of such action, it was the Respondent's case that the allegation of bias was a mere afterthought.

19. Further, it was the Respondent's contention that the Applicant never complained about his inability to read and write in the English language or breach of trust when drawing the agreement dated 31<sup>st</sup> May, 2008, and therefore such a claim was a mere afterthought.

20. That the evidence presented to the arbitral tribunal was clear that the Applicant owed money to the Respondent and there was nothing illegal about the contract entered into by the parties on 31<sup>st</sup> May, 2008 and that the same was only limited to an intended purchaser's interest.

21. The Respondent further denied that the said contract did not deem him an estate agent and therefore the provisions of the Estate Agents Act Cap 533 did not apply. In view of these assertions, the Respondent asked the court to decline the orders sought in the application and dismiss the same with costs.

22. The application was dispensed by way of written submissions. The Applicant filed his submissions on

18<sup>th</sup> January, 2018, while the Respondent filed his submissions on 24<sup>th</sup> February, 2016. The submissions are quite elaborate and are part of record.

23. There is therefore no need to restate the same as the contents are more or less similar to the averments contained in the respective affidavits of the parties. I have considered the Affidavits on record as well as the submissions of Counsel, and the authorities relied on. The following is my view on the matter.

24. The issue for determination in respect of the application is whether the applicant has established sufficient grounds to persuade this court to interfere with the award made by the arbitrator and consequently set it aside. However, I find it necessary to deal with one issue raised by the Respondent.

25. The Respondent in response to the application to set aside the arbitral award submitted that the application is time barred as it was not brought within 30 days after receipt of the arbitral award contrary to the provisions of Section 35(3) of the Arbitration Act (The Act). It is not in dispute that the arbitral award was made on 15<sup>th</sup> April, 2015 and on 17<sup>th</sup> April, 2015, the Arbitrator notified the parties that the award was ready for collection on 17<sup>th</sup> April, 2015.

26. According to the case of **Mahican Investments Limited & 3 Others –vs-Giovanni Gaida & 80 others (2005) eKLR** while citing the holding of Nyamu J in the case of **Transwood Safaris Ltd v Eagle Aviation Ltd & 3 others. H.C Misc. Application No. 238 of 2003**, a party is deemed to have received the award when notice is given that the arbitral award is ready for collection.

27. I am in full agreement with this holding. Given that in this particular case the parties were notified that the award was ready for collection on 17<sup>th</sup> April, 2015, three months from that date lapsed on 17<sup>th</sup> July, 2015. The application herein was filed on 29<sup>th</sup> September, 2015, five months after notification was given. In my assessment, the application herein is time barred.

28. Be that as it may, I am still of the view that the court must evaluate the merits or otherwise of the Applicant's application, more so due to the reason that the Respondent's prayer for recognition and enforcement of the award as a judgement of the court has been challenged by the Applicant.

29. It is noteworthy that under Section 37 of the Arbitration Act, the Court may refuse to recognize an arbitral award on grounds similar to those contained in section 35 of the Arbitration Act. The jurisdiction of the Court under section 35 of the Arbitration Act in setting aside an arbitral award is a strict one. Section 35 (2) (a) and (b) of the Act reads thus ;

***“(2) An arbitral award may be set aside by the High Court only if –***

***a. the party making the application furnishes proof***

***i. that a party to the arbitration agreement was under some incapacity;***

***ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, the laws of Kenya; or***

***iii. the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or***

***iv. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration or contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration contains decisions on matters not referred to arbitration may be set aside; or***

v. *the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate; or failing such agreement, was not in accordance with this Act; or*

vi. *the making of the award was induced or affected by fraud, bribery, undue influence or corruption;*

**b. the High Court finds that –**

i. *the subject-matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or*

ii. *the award is conflict with the public policy of Kenya”*

30. A reading of the above provision reveals that the Act recognizes the principle of party autonomy and limits the role of the courts in commercial arbitration. The principle of party autonomy underpinning arbitration is premised on the platform that provided it does not offend limits imposed by law, parties in a relationship have the right to choose their own means of resolving disputes without recourse to the courts or by limiting the circumstances under which recourse to the courts may be heard.

31. See the case of **Kenya Oil Company Limited & another v Kenya Pipeline Company [2014] eKLR**. The court cannot therefore go to the merits or failings of the Award when dealing with an application under Section 35 of the Act as this court is not sitting on an appeal from the decision of the arbitrator when considering whether or not to set aside the award. Further, the court cannot interfere with the findings of fact by an arbitrator. See the case of **DB Shapriya and Co. Ltd Vs Bish International BV [2003] 2EA 404**

32. From the pleadings and the arguments presented to the court, it is clear that the applicant predicated its application seeking to set aside the award of the arbitrator on Sections 35 (2) (a)(i) and 2 (b)(ii). The same grants this court jurisdiction to set aside an arbitral award where it is established by the aggrieved party that a party to the arbitration agreement was under some incapacity and that the award is in conflict with the Public Policy of Kenya.

33. I will thus examine all the arguments by the Applicant to see whether they fit or prove the grounds proffered. The Applicant thus bears the onus of proof in this application.

### **The Applicant's incapacity**

34. Under this heading, the applicant submitted that the agreement made on 31<sup>st</sup> May, 2008 was to the effect that he was to pay the Claimant the sum of Kshs. 25,000,000/= in return for facilitating the sale of the suit property that the Respondent had purchased to a third party at a profit. That however, the Applicant's Advocate in breach of trust, drew an agreement that did not capture this arrangement but instead drafted an agreement for services rendered.

35. The Applicant who could not read nor write in the English language could therefore not be in a position to tell that his advocate went against his instructions and drafted an agreement that was different from what he expected. That in the foregoing, the Applicant had the incapacity to enter into the agreement in question.

36. The Respondent in rebuttal to these submissions contended that the issue of incapacity raised by the Applicant was a mere afterthought. That under Section 35 of the Arbitration Act, the incapacity referred to has nothing to do with the inability of a person to read or write the English Language.

37. That further, this issue was not raised during the arbitral proceedings and therefore the same cannot be adjudicated by the Court since the same was never within the scope of the dispute presented to the

Arbitrator for adjudication.

38. Section 35 of the Act uses very specific words, that is “...**a party to the arbitration agreement was under some incapacity...**”. Thus it is clear that the capacity in law refers to the ability of a contracting party to enter into legally binding relations. If a party does not have the capacity to do so, then subsequent contracts may be invalid.

39. However, in the interests of certainty, there is a prima facie presumption that both parties hold the capacity to contract. The court in the case of **Dorothy Seyanoi Moschioni v Andrew Stuart & another [2014] eKLR** had the occasion to deal with this particular issue. **Gikonyo J** held as follows;

***“I would imagine that, incapacity in the sense of section 35 of the Arbitration Act would include the state of being a minor or of unsound mind or such other physical incapacity which is recognized by law as disabling or depriving legal capacity. I do not think, therefore, the incapacity envisioned under section 35 of the Act would include difficult situations or circumstances that a person finds himself or herself in...”***

40. Thus from the above it is clear that those who contract without a full knowledge of the relevant subject matter, or those who are illiterate or unfamiliar with the English language, will not often be released from their bargains. Though the Applicant in this case claims that his instructions were not followed with regard to the contents of the agreement, it is my finding that during the arbitral proceedings the said agreement was not challenged for being in a language that the Applicant could not understand. Essentially the same touched on the validity of the agreement and a question on the validity of the arbitration agreement is a preserve for the Arbitral Tribunal.

41. Further, the issue of breach of trust by the Applicant’s advocate cannot be adjudicated upon by this court, as the issue was not one that was raised in the Arbitral proceedings. In any case, the Applicant cannot be said to have lacked capacity merely because he could not read or write the English Language.

42. Incapacity in my thinking, can only be established in this case, if it shown that the Applicant was not of sound mind and or under the age of majority. Accordingly, the ground alleging incapacity fails and is hereby rejected.

### **Public Policy**

43. Under this heading, the Applicant flags out several issues. That firstly, contract between the parties was allegedly illegal. The second aspect was that by holding that the agreement between the parties was one for forfeiture as opposed to services rendered, amounted to the arbitrator re-writing the contract between the parties. The third issue was that the Arbitrator applied double standards in the matter and was biased.

44. Before looking at these issues in turn, it is important to set out the meaning of public policy in the context of section 35 of the Arbitration Act. In the **Christ for all Nations Vs Apollo Insurance Co. Ltd. (2002) EA 366** in which the court rendered itself thus,

***“I am persuaded by the logic of the Supreme Court of India and I take the view that although public policy is a most broad concept incapable of precise definition, or that as the common law Judges of yonder years used to say, it’s an unruly horse and when once you get astride of it you never know where it will carry you. An award could be set aside under section 35(2) (b) (ii) of the Arbitration Act as being inconsistent with the public policy of Kenya if it is shown that it was either (e) inconsistent with the Constitution of Kenya or to other laws of Kenya, whether written or unwritten or (b) Inimical to the national interest of Kenya or (c) contrary to justice or morality. The first category is clear. In the second category I would without claiming to be exhaustive include the interest of the national defence and security good diplomatic relations with friendship nations and the economic prosperity of Kenya. In the third category, I would again without seeking to be exhaustive include such considerations as whether the award was***

***induced by corruption, fraud or whether it was founded on a contract contrary to public morals”***

45. A reading of the above decision divulges that an applicant has to demonstrate that an arbitral award was inconsistent with the Constitution or other laws of Kenya, or inimical to the national interest of Kenya or contrary to justice and morality. Has the Applicant in this case persuaded this court that the award was contrary to public policy?

46. On the question of legality of the contract in question, it was the Applicant’s allegation that the contract involved the engagement of the Respondent as an Estate Agent contrary to the provisions of the Estate Agents Act. From the award filed in court at page 26, it is clear that the Arbitrator dealt with this particular issue. He noted as follows at paragraph 4.2 ;

***“4.2 Did the Claimant present himself to the Respondent as a licensed Estate Agent within the meaning of section 8 of the Estate Agent Act of Kenya?***

***.....I do not find anywhere in the agreement dated 31<sup>st</sup> May 2008 where the Claimant purported to present himself as an estate agent within the meaning of section 8 of the Estate Agents Act. In the said agreement there is no mention of the Claimant acting as such and in fact in paragraph 5 clearly states that the consideration was not a commission but for services rendered. The services rendered have been explained above in paragraph 4.1 above. Should the Claimant have been acting as an estate agent, then the agreement would have made reference to a commission to be paid by the Respondent for acting as such. The Respondent also had the opportunity to amend the agreement before executing the same. The Claimant has clearly laid a basis for his consideration which was forfeiture of the right to purchase.***

***I therefore answer this issue in the negative.”***

47. From the above, it is clear that the arbitrator dealt with the issue of whether or not the agreement between the parties was one in the nature that would be governed by the Estate Agents Act, Cap 533 Laws of Kenya. According to the Applicant, the Respondent herein was a non-registered person who offered services that in law would be deemed to be those of an estate agent.

48. The fact that the word “commission” was not used in the agreement, did not invalidate the fact that the contract that the Respondent sought to benefit from was illegal since he was not an Estate Agent. The Arbitrator thereafter dealt with the facts before him and made certain conclusions.

49. However, on whether the findings were correct or not, I am of the opinion that this court has no jurisdiction to make a finding and holding contrary to what the Arbitral Tribunal had arrived or to interfere with the award given. As held in the case of **Rashid Moledina & Co (Mombasa) Limited & Others vs Hoima Ginnors Limited (1967) E.A. 645**, courts will be slow to interfere with an arbitral award as parties would have voluntarily chosen arbitration as a forum for the resolution or settlement of their dispute.

50. If the court would look into the issue of whether the Respondent undertook to render services that would be construed as Estate Agent services as invited to do, the same would be tantamount to the court trying to render itself on a question of fact.

51. The Arbitrator used the facts before him in determining this issue and as the Arbitrator remains the master of the facts, the Court can only make a finding as to an error in law and not of fact. See the case **Kenya Oil Company Limited & Another v Kenya Pipeline Company [2014] eKLR, Moran v LLoyds (1983) 2 ALL ER 200** and **DB SHAPRIYA & CO. v BISHINT (2003) 3 EA 404**, where there is judicial consensus that;

***“All questions of fact are and always have been within the sole domain of the Arbitrator.....the general rule deductible from these decisions is that the court cannot interfere with the findings of facts by the Arbitrator.”***

52. The arbitral tribunal was therefore seized of relevant material and facts which were placed before it by the Applicant and the Respondent. It considered all relevant material. It inquired into the existence of the facts in the case and decided on whether or not the contract between the parties was an estate agency contract requiring registration of the Respondent under the Estate Agents Act. The court cannot therefore be called to disturb the award on that front.

53. I shall now proceed to the next issue in which the Applicant maintains that the Arbitrator attempted to re-write the contract between the parties by holding the same is one of forfeiture as opposed to services rendered. I have examined the agreement that is the subject to this application and more so the arbitration clause found at Page 53 of the Applicant's bundle of documents. The same states as follows;

***“Any dispute difference or question which may arise at any time between the Parties touching upon this Agreement or on the rights and liabilities of the Parties with respect thereto shall be referred to the decision of a single arbitrator to be agreed upon between the Parties or in default of agreement within fourteen (14) days to be appointed at the request of any Party by the Chairman for the time being of the Kenya Branch of Chartered Institute of Arbitrators or the vice chairman if the chairman is unable or disqualified to act for any reason.”***

54. To my mind, the Arbitrator was given the power by the parties to the said Agreement to deal with any matters in dispute as between them which would include the nature of the agreement between the parties and such other matters as the Arbitrator saw fit to deal with under the Agreement.

55. If this Court was to interfere in any way with the finding of the Award as proposed, and particularly on whether the agreement between the parties was one of forfeiture or services rendered, this would be tantamount to an appeal of the arbitral award which under the provisions of sections 10 and 39 of the Arbitration Act, this Court has no power so to do. See the case of **Allan Michael Gilham & Anor –vs- Bel Air Investments Ltd [2013]eKLR**. The application cannot therefore succeed on this front.

56. I now turn to the issue of the bias and application of double standards. It was alleged that the arbitrator treated the Respondent's evidence preferentially to that of the Applicant during the arbitral proceedings, which was in contravention to Section 19 of the Arbitration Act. The Respondent however denied the Applicant's assertions and dismisses them as mere afterthoughts.

57. I have considered the arguments by the opposing parties. The circumstances which constitute justifiable doubt as to impartiality of the arbitrator need not necessarily relate to the substantive dispute at hand but they should be of such nature which impeach the integrity of the arbitrator or would create real apprehension in the eyes of a reasonable person that justice will not be done by the arbitrator in the dispute at hand.

58. See the case of **Kenya Pipeline Company Limited v Kenya Oil Company Limited & another [2015] eKLR**. As such it is clear that the party alleging bias has the onus to prove it. The allegations should be supported by cogent proof either by direct evidence or must be clearly inferred from a set of facts.

59. I have looked at the record, more so the arbitral proceedings in the Applicant's bundle of documents. The Applicant in my opinion has not shown how the Arbitrator's evaluation of the evidence before him was biased, unfair and unjust in the making of the award herein. In my assessment the Arbitrator determined the issue of liability and as expected his decision was based on the evidence presented before him.

60. Nothing is inconsistent with impartiality of the arbitral tribunal, as to amount to circumstances giving rise to justifiable doubts as to the impartiality and independence of the arbitrator. In my opinion, the Applicant's contentions merely challenge the Arbitrator's interpretation of the facts, evidence tendered and law, as correctly submitted by the Respondent. In line with this observation, I do not find anything which would suggest an open prejudice by the Arbitrator against the Applicants.

61. If the Applicant wished the court to re-evaluate the evidence before the arbitral proceedings, he ought to have filed an appeal under section 39 to enable the court determine on issues of evidence that were before the Arbitrator. Additionally, the Arbitrator also gave each party time to present his case before him. A reading of the Award, clearly shows that the Arbitrator evaluated the arguments before him and therefore I fail to see where the issue of bias arose.

**Final Rendition**

62. Accordingly, having considered the pleadings, the affidavits, the written submissions and the case law in support of the respective parties' cases, I come to conclusion that the Applicant has failed to convince this court to set aside the award dated 15<sup>th</sup> April, 2015. The upshot is that I dismiss the application dated 28<sup>th</sup> September, 2015 with costs to the Respondent.

63. It is so ordered.

**APPLICATION FOR RECOGNITION AND ENFORCEMENT OF AWARD**

64. As indicated in the first part of this ruling, I will consider the Chamber Summons dated 30<sup>th</sup> October, 2015 for recognition and enforcement of the award herein as a decree of the Court. I have determined the Notice of Motion dated 28<sup>th</sup> September, 2015 which was for setting aside the final award herein.

65. Therefore, as there is no pending application under section 35 of the Arbitration Act, the award which should be recognized by and enforced as a decree of this court is as determined in that application.

66. Accordingly, the said award as determined in the Notice of Motion dated 28<sup>th</sup> September, 2015 is hereby recognized by this court and shall be enforced as the order of this court. It is so ordered.

**Dated, Signed and Delivered in Court at Nairobi this 27<sup>th</sup> day of May, 2016.**

.....

**C. KARIUKI**

**JUDGE**