



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL AND ADMIRALTY DIVISION**  
**MISCELLANEOUS APPL. NO. 379 OF 2014**

**NJUCA HOLDINGS CO. LIMITED.....APPLICANT/RESPONDENT**

**-VERSUS-**

**NYAYO TEA ZONES DEVELOPMENT CORPORATION...RESPONDENT/APPLICANT**

**R U L I N G**

1. The **Notice of Motion** application before the court is dated and filed in court on **28th May 2015** by the Respondent/Applicant pursuant to Section 1A, 1B and 3A of the Civil Procedure Act and Order 21 Rules 12 (1) and (2) and Order 51 Rule 1 of the Civil procedure Rules. The application seeks the following orders:-

1. *That this application be and is hereby certified urgent to be heard ex-parte in the first instance.*
2. *That pending the hearing and determination of this application, there be a stay of execution of the decree arising out of the ruling delivered by Ogola J. on 30/04/2015.*
3. *That this honourable court be pleased to direct that the decretal sum be paid by instalments in terms of the proposal made by the Respondent/Applicant without any further interest accruing.*
4. *That costs of this application be provided for.*

2. The application is premised on the grounds set out therein and is supported by affidavit of Peer K. Korir sworn on 28th May 2015, and a further affidavit sworn on 5th June 2015.

3. The gist of the application is that the Applicant, having accepted the adoption by this court of an arbitral award in favour of the Respondent, which award is alleged to amount to over Kshs.95,000,000/=, Kshs.35,000,000/= of which the Applicant alleges to have paid, the Applicant now pleads with this court to allow it to liquidate the alleged balance of Kshs.60,000,000/= by reasonable monthly instalments of Kshs.10,000,000/= by 4th July 2015; Kshs.10,000,000/= by 4th September 2015; and Kshs.40,000,000/= by 30th October 2015. The Applicant alleges that it has no financial capacity to pay the entire award now due at once, since the award is a colossal sum of money.

4. The application is opposed by the Applicant/Respondent vide a Notice of Preliminary Objection on points of law, filed in court on 5th June 2015. The Applicant /Respondent has taken objection on points of law that:-

- *This court has no jurisdiction to entertain the application as the subject matter is an arbitral award.*

- ***That the application is an abuse of the process fo the court.***
- ***That the application is incompetent, fatally defective and inadmissible.***

5. It was agreed that the Preliminary Objection should be dispensed with first, and counsel made oral submissions on the said Preliminary Objection. This Ruling therefore relates only to the said Preliminary Objection and not to the application.

6. I have carefully considered the Preliminary Objection in relation to the said application. In my view there is only one issue to be determined in order to dispense with the Preliminary Objection, and the issue is:-

- Whether, the process herein being arbitral in nature, this court has no jurisdiction to entertain the application and to order execution of the decree by instalments.***

7. There is no denying that the courts have limited role in arbitral processes. In fact Section 10 of the Arbitration Act states that:-

***Section 10: “Except as provided in this Act, no court shall intervene in matters governed by this Act.”***

Sections 35 of the Act document grounds upon which an award can be challenged or set aside by court.

8. Section 36 of the Act deals with Recognition and enforcement of awards. It provides that a domestic arbitral award shall be recognised as binding and, upon application in writing to the High Court, shall be enforced. So clearly, the role of the court in arbitral process is limited. Sections 35, 36 and 37 of the Act appears to allow the High Court limited roles in relation to setting aside the award, recognition and refusal to recognise the award. The issue which then arises is whether or not, after the court has lawfully adopted the award, the award is then to be self executory, or whether the execution of the award depends on the ordinary rules under which the High court orders are executable. I have looked at Section 36 of the Act. Under the Act, International arbitration award is to be enforced in accordance with the provisions of the New York Convention, or any other convention to which Kenya is signatory and relating to arbitral awards. However, a domestic arbitral award is to be recognised as binding and enforced subject to Section 37.

9. In my understanding, Section 36 affords the High Court the jurisdiction to entertain an arbitral award by recognising it as binding, and then enforcing it. While Section 36 (2) states that ***“an international award shall be recognised as binding and enforced in accordance to the provisions of the New York Convention . . .”***

10. There is no enforcement provisions equivalent for domestic awards. This in my view, leaves the execution process at the mercy of the High Court which has adopted the award, and in this case the normal High Court Civil Procedure Rules of execution apply forcefully, only subject to Section 36 of the Act.

11. In my view, once the High Court adopts an arbitral award, the award becomes an “adopted child so to speak of the High Court”, and so, the execution process from the moment of adoption must be dictated by the normal execution processes of the High Court. Any submission that the High Court lacks jurisdiction to entertain an arbitral award after the High Court has adopted the same under Section 36 of the Arbitration Act lacks legal validity, and is a submission in vain. The High court has the jurisdiction to oversee the execution process, from the adoption of the award, approval of the decree, to attachment of the debtors property under the usual Civil Procedure Rules. It is therefore my finding, and I hold that a debtor labouring under an arbitral award which has been adopted by the court, has the right to come to court and to seek orders, or remedies pertaining to the execution of that award, provided that such an order or remedy is not seeking any orders negating the award. Once adopted in court, an arbitral award becomes the judgement of the court, and is subject to High Court execution process just like any other judgement of the court.

12. In light of the foregoing, this court has no hesitation rejecting the Notice of Preliminary Objection filed in court by the Applicant/Respondent on 5th June 2015.

13. The costs of the Preliminary Objection shall abide that of the main application, to be heard on a day to be agreed upon by the parties.

14. Interim orders herein shall abide until the hearing and determination of the Notice of Motion dated 28th May 2015.

Orders accordingly.

**READ, DELIVERED AND DATED AT NAIROBI THIS 31ST DAY OF JULY 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

Mr. Odongo for the Applicant/Respondent

No appearance for the Respondent/Applicant

Teresia – Court Clerk