



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL AND ADMIRALTY DIVISION

MISCELLANEOUS APPL. NO. 173 OF 2015

IN THE MATTER OF THE ARBITRATION ACT, 1995 (AS AMENDED)

AND

IN THE MATTER OF THE ARBITRATION

BETWEEN

SEVEN TWENTY INVESTMENTS LIMITED ::::::::::::::::::::::::::::::: APPLICANT

-VERSUS-

SANDHOE INVESTMENT KENYA LIMITED ::::::::::::::::::::::::::::::: RESPONDENT

R U L I N G

1. The Application by way of **Chamber Summons** dated **13th April 2015** seeks the leave of this court to enforce as a decree of this court the Arbitrator's Final Award dated 10th July 2014 and the Award on Assessment of cost dated 22nd January 2015.
2. The application is premised on the facts that upon the finalisation of the arbitral process rein, and upon the Respondent failure to set aside the award, this court has the jurisdiction under Section 36 of the Arbitration Act to adopt the award, as there is now no other process except the adoption of the award.
3. The application is supported by affidavit of **Donald Earle Smith** sworn on **13th April 2015** to which is annexed a copy of the award (save as to assessment of costs) dated 10th July 2015 and a copy of the Award on Assessment of costs) dated of the Award on Assessment of Costs dated January 2015.
4. The application is opposed by the Respondent through a replying affidavit of Bret Thomas Lang sworn on 8th May 2015. Mr. Lang, who describes himself as a director of the Respondent company states that the Respondent is opposed to the recognition and adoption of the two awards on the grounds that the award provided that the Applicant remit to the Respondent the sum of USD 124,038 being the balance of the Purchase price for the Aircraft together with interest at the rates stipulated in the contract between the parties. The Respondent states that the Award provided that upon payment of the balance of the said purchase price and interest, the Respondent would cooperate with the Applicant to procure the release to the Applicant the documentation and discharged of charge against the aircraft to facilitate transfer of ownership to the applicant. However, the Applicant has failed or refused to do this and so this application for the recognition and action of the two awards should not be allowed.

5. I have carefully considered the applications and opposing submissions. For me, the only issue for determination is whether there are any barrier to the adoption of award under Section 37 of the Arbitration Act.

6. To deal with this issue it is instructive that the Respondent sought to set aside the awards under Section 35 of the Arbitration Act. Justice Fred Ochieng by his Ruling on 10th February 2015 dismissed the Respondent's application, describing it as lacking in merits.

7. The Applicant has not come for the recognition of the Awards under Section 37 of the Act. That section provides grounds for refusal of recognition or enforcement. I have perused these grounds, and summarily, I find none of them can be relied on by the Respondent to deny recognition. The Respondent has not, and cannot , as matters stand now, mount any resistance to recognition of the said arbitral awards. This application by the Applicant for recognition and adoption of the two awards is merited. In my view, recognition and adoption is a process which must be allowed whether or not there are other issues of account between the parties. I understand the Respondent to be saying that this court should not recognise and adopt the awards because there are some unsettled accounts between the parties. Even if that be so, it cannot form a ground under Section 37 of Arbitrator Act to deny recognition and adoption of an award. As soon as the awards are recognised and adopted, the parties will still be at liberty to settle other accounts pending between them.

8. For the reasons foregoing, the application herein dated 13th April 2015 is allowed as prayed with costs to the Applicant.

Orders accordingly.

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

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Njuguna for the Applicant

Mr. Mweu for the Respondent

Teresia – Court Clerk