



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**(MILIMANI COMMERCIAL & ADMIRALTY DIVISION)**  
**MISC CAUSE NO 13 OF 2015**  
**IN THE MATTER OF THE ARBITRATOR ACT NO. 4 OF 1995**  
  
**AND**  
**IN THE MATTER OF AN ARBITRATION**

**BETWEEN**

**JULIUS NDUNGU KABERERE .....**  
**APPLICANT**

**VERSUS**

**LUCY NJERI KARANGU (PERSONAL REPRESENTATIVE OF THE ESTATE OF**  
**CHARLES MUNGAI NGURE) .....**  
**RESPONDENT**

**RULING**

**INTRODUCTION**

1. The Applicant's Chamber Summons application dated and filed 12<sup>th</sup> January 2015 was brought under the provisions of Section 36 of the Arbitration Act, 1995 and Rule 6 of the Arbitration Rules, 1997 and all other enabling provisions of the law. It sought the following orders:-
  - a. **THAT the Claimant/ Applicant be granted leave to enforce the Final Award made on 20/6/2014 by the arbitrator, Allen Waiyaki Gichuhi as a Decree of this Honourable Court.**

- b. **THAT the costs of this Application be borne by the Respondent.**
- c. **THAT the costs and expenses incidental to the enforcement of the Final Award and Decree be borne by the Respondent.**

### THE APPLICANT'S CASE

2. The application was supported by the Applicant's Affidavit that was sworn on 12<sup>th</sup> January 2015. His Written Submissions were dated 23<sup>rd</sup> April 2015 and filed on 24<sup>th</sup> April 2015.
3. He contended that he entered into an Agreement for the purchase of the properties known as Title Numbers Makuyu/Kimorori Block 1/1820; 1821, 1822 and 1823 with the Respondent's husband (now deceased) in which parties agreed to refer the dispute that had arisen between them to the aforesaid Arbitrator.
4. He further averred the said Arbitrator having made his Final Award dated 20<sup>th</sup> June 2014 and that there being no application for setting aside of the said Final Award that had been filed within three (3) months from the date the said Final Award, the said Final Award ought to be enforced as a judgment of this court. He therefore urged the court to allow his application as prayed.

### THE RESPONDENT'S CASE

5. In response to the said application, on 25<sup>th</sup> April 2015, the Respondent herein filed her Grounds of Opposition dated 24<sup>th</sup> April 2015. The same were as follows:-
  - a. **THAT the Respondent was greatly displeased by the finding of the Honourable learned arbitrator in respect of the subject arbitral award.**
  - b. **THAT being so displeased the Respondent was contesting the award issued therewith, to wit the Respondent had earlier duly filed an Application to set aside the subject arbitral award for various grounds *inter alia* that the arbitrator exceeded his jurisdiction & mandate; the award was contrary to Kenya's public policy including that a Court of law indeed an arbitral tribunal cannot re-write a contract between parties, privity of contract *et al.*(sic)**
  - c. **THAT in seeking to have the irregular award set aside the Respondent had filed an Application lodged in court and registered as High Court Misc Application 590 of 2014 Lucy Njeri Karangu vs Julius Ndungu Kaberere, which Application was awaiting determination.**
  - d. **THAT the Respondent wholly relied on the Chamber Summons Application and the Supporting Affidavit of Lucy Njeri Karangu, the Respondent herein dated the 5<sup>th</sup> of December, 2014 *in toto* in response to the alleged appropriacy of the subject arbitral award and the Application seeking enforcement of the Arbitral Award.**
  - e. **THAT it was in the interest of justice that the Application to adopt the Arbitral Award dated 20<sup>th</sup> June 2014 be struck out and that the Respondent's [herein] Application to set aside the award be allowed with costs.**
6. Her Written Submissions and List & Bundle of Authorities were both dated 24<sup>th</sup> March 2015 and filed on 25<sup>th</sup> March 2015.

### LEGAL ANALYSIS

7. The Respondent had initially filed her application to set aside the Final Award within the three (3) months stipulated in the Arbitration Act Cap 49 (Laws of Kenya) but withdrew the same to enable her file a proper application. The court opted not to rely too much on technicalities and considered the merits of her application with a view to bringing this matter to a just conclusion. This is because litigation must come to an end after due consideration of all facts on merit.
8. The court did not therefore find it fit to find that the Final Award should be recognised and enforced as a judgment of this court merely on the ground that the Respondent herein did not file an application to set aside the said Final Award within the stipulated time aforesaid but rather on the merits of the Applicant's present application.
9. In determining the Respondent's Chamber Summons application dated and filed on 5<sup>th</sup> December

2014 to set aside the Final Award, in its separate Ruling dated 22<sup>nd</sup> September 2015, the court found that the Applicant did not satisfy it that she had met any or all of the grounds under Section 35 of the Arbitration Act that she was relying upon to warrant this court to interfere with the said Final Award. Her said application had failed in its entirety on this ground only.

10. The finality of Arbitral Awards is well captured in Section 32A of the Arbitration Act in which it is stipulated as follows:-

**“Except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it, and no recourse is available against the award otherwise than in the manner provided by this Act.”**

11. As was evident in the Arbitration Clause of the Sale Agreement dated 20<sup>th</sup> November 2006 that was entered into by the Applicant and the Respondent’s husband, the decision of the said Arbitrator was to be conclusive and binding on both parties.

12. Clause G of the said Sale Agreement provided as follows:-

**“...the award of the arbitration tribunal shall be final and binding upon the Parties to the extent permitted by law and either Party may apply to a court of competent jurisdiction for enforcement of such award..”**

13. Accordingly, having considered the pleadings, affidavit evidence, written submissions and case law in respect of the parties’ cases, the Applicant satisfied this court that it was in the interest of justice that the path the parties had opted for be allowed to take its natural course as the jurisdiction of this court was limited by the provisions of Section 10 of the Arbitration Act that provides as follows:-

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

#### **DISPOSITION**

14. For the foregoing reasons, the upshot of this court’s ruling was that the Applicant’s Chamber Summons application dated and filed on 12<sup>th</sup> January 2015 was merited and the same was hereby allowed in terms of Prayer Nos (1) and (2) therein. The court did not deem it necessary to grant Prayer No (3) therein as the costs and expenses of the judgment follow the event.

15. It is so ordered.

**DATED and SIGNED at NAIROBI this 18<sup>th</sup> day of September 2015**

**J. KAMAU**

**JUDGE**

**READ, DELIVERED and SIGNED AT NAIROBI this 22<sup>nd</sup> day of September 2015**

**F. AMIN**

**JUDGE**