



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MISC. CIVIL APPLICATION NUMBER 37 OF 2011**  
**IN THE MATTER OF THE ARBITRATION ACT 1995**  
**AND**  
**IN THE MATTER OF ARBITRATION**  
**BETWEEN**  
**KENELEC SUPPLIES LIMITED. .... CLAIMANT**  
**VERSUS**  
**OIL TANKING (EPZ) LIMITED. .... RESPONDENT**

**R U L I N G**

Before me is a Chamber Summons dated 11<sup>th</sup> October, 2010 filed by M/s Muriu Mungai & Company Advocates for the applicant **OIL TANKING (EPZ) LIMITED**, the respondent. The application was filed under section 26 of the Arbitration Act 1995 and rule 9 of the Arbitration Rules 1997.

The prayers sought are as follows: -

- 1. THAT the award made on 26<sup>th</sup> March 2010 by KENNETH W AKIDE be recognized as binding and be enforced between the parties herein and a decree of this court do issue.**
- 2. THAT costs for enforcement and execution of this award be provided for.**

The application has three grounds on the face of the Chamber Summons. It was filed with a supporting affidavit sworn by Powell Maimba on 11<sup>th</sup> October 2010.

The grounds of the application are as follows: -

- a) THAT by agreement the applicant and the respondent submitted a dispute between them for arbitration.**
- b) THAT in an award dated 26<sup>th</sup> March 2010 the Arbitrator dismissed the statement of claim dated 10<sup>th</sup>**

**December 2007 in its entirety with costs.**

**c) THAT the Respondent claimant has not applied to set aside the award under section 35 of the Arbitration Act 1995 or at all.**

In the supporting affidavit it was deponed, inter alia, that the deponent was the Managing Director of the respondent; that the parties entered into a contract dated 19<sup>th</sup> June 2006 for sale of penetration grade bitumen 60/70; that a dispute arising from the matter was by consent referred to Mr. Kenneth Akide as sole Arbitrator and heard to conclusion and that the arbitrator on 26<sup>th</sup> March 2010 wrote to the advocates for the parties informing them that the award was ready for collection upon payment of fees; that the claimant and respondent paid their respective fees; that the arbitrator in the award dismissed the entire arbitration claim lodged by the claimant herein and awarded the costs thereto to the respondent; that no application had been filed by either party to set aside the said award; and that the said award be recognized as an order of this court and the same be enforced as a decree of this court.

Though the application was served and the hearing notice served, no response was filed, nor did the claimant **KENELEC SUPPLIES LTD** or their advocate appear in court on the hearing date.

The application therefore stands unopposed. Under section 36 of the Arbitration Act 1995, it is provided that an arbitral award be recognized as binding by the High Court and be so enforced on application. The said section provides: -

**36 (1). An arbitral award, irrespective of the state in which it was made shall be recognized as binding and, upon application in writing to the High Court, shall be enforced subject to this section and section 37.**

**(2). Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement shall furnish –**

**(a) the duly authenticated original arbitral award or a duly certified copy if it, and**

**(b) the original arbitration agreement or a duly certified copy of it.**

**(3) If the arbitral award or arbitration agreement is not made in the English language the party shall furnish a duly certified translation of it into the English language.”**

I have seen a certified copy of the arbitral award herein made by the arbitrator Kenneth Akide on 26<sup>th</sup> March 2010. This application not being opposed, I have no alternative than to allow the same in accordance with the law. The law enjoins me to grant the orders sought.

For the above reasons, I allow the Chamber Summons dated 11<sup>th</sup> October, 2010 and grant prayer 1. Costs of enforcement and execution of the award are granted to **OIL TANKING (EPZ) LTD** against **KENELEC SUPPLIES LTD**, which if not agreed will be taxed.

It is so ordered.

Dated and delivered at Nairobi this 23<sup>rd</sup> day of March 2011.

.....  
**GEORGE DULU**  
**JUDGE**

**In presence of**

None appearance for parties

C Muendo – court clerk

