

**REPUBLIC OF KENYA
E HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 794 of 2003

KUDAN SINGH CONSTRUCTION LTD PLAINTIFF

VERSUS

KENYA PORTS AUTHORITY DEFENDANT

RULING

This is an application by the Plaintiff seeking an order that the arbitral award herein be adopted and made a decree of this court. Other consequential and related orders are also sought. The application is expressed to be brought under section 36 of the Arbitration Act, 1995, rules 4, 9 and 10 of the Arbitration Rules, 1997 and sections 3A and 63 (e) of the Civil Procedure Act, Cap. 21. The grounds for the application, as they appear on the face thereof, are that this matter proceeded for arbitration and award was given on 18th September 2006; that the arbitration award is valid under the law; that no grounds exist to warrant refusal to recognise and enforce the award; that the Plaintiff has a right to enforce the award; and that the Defendant will not be prejudiced at all if the application is granted. There is a supporting affidavit sworn by one KARIUKI MUIGUA, the Plaintiff's advocate.

The application is opposed by the Defendant upon the grounds (grounds of objection dated 2nd February 2007):-

1. That the application is not in compliance with section 36 (2) of the Arbitration Act, and rule 4 (2) of the Arbitration Rules.
2. That the application is premature in light of section 36 (1) of the Arbitration Act, rule 4 (1) of the Arbitration Rules, section 27 and 34 of the Civil Procedure Act, Cap. 21 and Order 20 rules 6, 7 and 8 of the Civil Procedure Rules.

I have considered the submissions of the learned counsels appearing. Sub-section 2 of section 36 of the Arbitration Act, 1995 provides as follows:

“36. (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 of it; and**
- (b) the original arbitration agreement or a duly certified copy of it.”**

I have perused the court record herein. I have not found in the record the duly authenticated original arbitral award or a duly certified copy of it. Nor have I found the original arbitration agreement or a duly certified copy of it. These two documents are required by statute to be furnished by the party relying on an arbitral award or applying for its enforcement, unless the court otherwise orders. The court has not otherwise ordered. What we have in the court record is what appears to be a photocopy of the arbitration award dated 18th September 2006, though it is signed in the original by the witness, ELENA WANJIRU. The arbitrator's signature appears to be in photocopy, along with the rest of the document, except for the name and signature of ELENA WANJIRU. The arbitral agreement in the court record is a photocopy annexed to an affidavit filed in support of an application. No application has been made, and no order has

been made, to obviate the necessity of furnishing the duly authenticated original arbitral award or a duly certified copy of it and the original arbitration agreement or a duly certified copy of it.

I must therefore uphold the first objection of the Defendant to the application. That is a sufficient ground to refuse to consider the merits of the application at this stage. In the event, the application is misconceived for want of the vital documents required by sub-section (2) of section 36 of the Arbitration Act, or an order of the court obviating the furnishing of the same. It is hereby struck out with costs to the Defendant. Orders accordingly.

DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF MARCH, 2007.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 23RD DAY OF MARCH, 2007.