



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
MILIMANI COMMERCIAL COURTS
MISC. APPLICATION NO. 124 OF 2004**

IN THE MATTER OF AL-NAKHIL ENTERPRISES LIMITED

AND

**IN THE MATTER OF THE ARBITRATION ACT NO. 4 OF 1995 AND THE
ARBITRATION RULES 1997**

OFFICE DU CAFÉ DU BURUNDIAPPLICANT

VERSUS

O.M ROBINSON & COMPANY ADVOCATES

**(Sued as the Appointed liquidators of
AL-NAKHIL ENTERPRISES LIMITED (in liquidation) ...RESPONDENT**

RULING

The applicant by a chamber summons seeks the enforcement and entering of judgment as per the arbitral award No. 902T. The application is brought under Section 36 of the Arbitration Act (No. 4 of 1995) and Rule 9 of the Arbitration Rules, (1997).

The application is grounded on the following grounds: -

- That the Coffee Trade Federation Limited in London awarded the applicant an arbitration award No. 902T of May 1992 on 5th May 1999 against the Respondent prior to the voluntary winding of the Respondent company.
- That the applicant now seeks recognition and enforcement of the Arbitration Award amounting to Us \$ 2, 417, 460. 28 and the interest on that amount upto the date of payment by the Honourable court.
- That O.M. Robinson & Co. Advocates is the appointed Liquidator of AL Nakhil Enterprises Limited.

The application is supported by the affidavit of Emmanuel Nkengurutse who describes himself as the Economic Manager of the applicant.

The applicant's counsel submitted that by a contract dated 15th March 1997 made between the applicants and AL Nakhil Enterprises Ltd (now in Receivership) and confirmed by further agreement dated 2nd April 1997 and amended on the 10th June 1997 and by a further agreement dated 12th August 1997, the parties agreed that any dispute between them was to be referred to arbitration for determination.

A dispute arose where the applicants initiated arbitration proceedings. The respondent failed to appoint an arbitrator and under the rules that govern the arbitration, Coffee Trade Federation Limited, appointed an arbitrator for the respondent.

An umpire was appointed by the arbitrators who proceeded to receive evidence in the presence of both arbitrators.

Consequently after the hearing the Coffee Federation Ltd issued an arbitration award No. 902T which was published on 5th May 1999.

The Respondent despite several reminders, and it was argued without any justification, refused, failed and/or neglected to fully pay the arbitral award of US \$ 2, 417, 460. 28 plus interest at the rate of Libor + 2 % on US \$ 617, 460. 28 from 20th April 1998 and on US \$ 1, 800, 000. 00 from 9th July 1998.

The applicant has therefore come before this court seeking the recognition and enforcement of the award.

This ruling would not be complete without recording the drama that ensued at the hearing of the application.

The matter was first before court on 27th October 2004 and on the same being called out the Respondent was absent.

Whilst counsel for the applicant was on his feet arguing the application, at 9.30 a.m. an advocate called Mr. Wanga came into court and interrupted the applicant counsel.

Mr Wanga sought the courts indulgence to adjourn the matter on the basis that he had been instructed by a counsel called Malombo on telephone that he had mistakenly filed a notice of appointment in the Central registry.

Whilst the court was writing it's ruling on that application to adjourn another person entered court and wished to address the court before the ruling was finalized. The court declined.

The ruling was delivered refusing the application for adjournment.

When counsel for the applicant completed his submissions, the counsel who now introduced himself as Mr. Robinson again applied for an adjournment.

The court granted that adjournment and ordered that a replying affidavit be filed and served by 3rd November 2004 and the applicant was also granted leave to file supplementary affidavit, if needed, by 4th November 2004. The matter was set down for further hearing on 5th November 2004.

On 5th November when the matter was called out only the counsel for the applicant was present and there were no documents filed on behalf of the Respondent. The applicant counsel completed his submissions.

Having regard to the submissions made before me and the affidavit evidence I am of the view that this application is merited.

The Orders of this court are: -

(a) That the applicant is granted all prayers sought in the application.

(b) The court will not require the applicant to furnish an authenticated or certified copy of the arbitral award or the original arbitration agreement as required under Section 36 (2), (a) and (b) of the Arbitration Act.

Dated and delivered this 29th day of November 2004.

MARY KASANGO

AG JUDGE