



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC MISC CIVIL APPLICATION NO. 26 OF 2020

MAURICE ODUOR NYAKONEAPPLICANT

VERSUS

DIAMOND PROPERTY MERCHANTS LTD.....RESPONDENT

RULING

By a Chamber Summons application dated the 2nd September, 2020, brought pursuant to section 36(1) & (3) of the Arbitration Act, Rule 4 (1), (2), (6) & (9) of the Arbitration Rules 1997 as well as Section 1A, 3A and 59 (c) of the Civil Procedure Act, the Applicant seeks the following orders:

1. That the arbitral award dated 12th June, 2020 together with the award on costs dated 24th August, 2020 be recognized, adopted and enforced as an order of the court.
2. That leave be granted to enforce the arbitral award dated the 12th June, 2020 and the award on costs dated 24th August, 2020 as a Decree of the Court.
3. The costs of this application be provided for.

The application is premised on the grounds on the face of it and the annexed affidavit of the applicant MAURICE ODUOR NYAKONE where he deposes that the dispute herein emanated from an undated Sale of land Agreement between himself and the Respondent in relation to Plot 697 and 700 on joint title number KJD/ IL DAMAT/ 5555. Further, that the dispute was referred to arbitration as per clause 21 of the Sale of Land Agreement. He confirms that the dispute was arbitrated by D N Mbigi – MCI Arb who had been nominated by the Chartered Institute of Arbitrator – Kenya vide letter dated the 11th October, 2019. He explains that an arbitral award dated the 12th June, 2020 was issued by the Arbitrator. Further, that an additional award on costs dated the 21st August, 2020 was also issued by the Arbitrator. He contends that the Respondent has totally refused and / or neglected to settle the arbitral award plus costs.

Analysis and Determination

Upon consideration of the Chamber Summons application dated the 2nd September, 2020 including the supporting affidavit as well as the annexures thereon, the issues for determination is whether the Applicant is entitled to the orders sought therein.

The Applicant has sought for the arbitral award dated the 12th June, 2020 together with the award on costs dated 24th August, 2020 to be recognized, adopted and enforced as an order of the court. Further, that leave be granted to enforce the said arbitral award and the award on costs as a Decree of the Court. The Respondent though duly served failed to enter an appearance or filed a response to the instant application. The averments herein hence remain uncontroverted.

Section 32 (A) of the Arbitration Act provides that: **“Except 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.”**

In the case of **Tanzania National Roads Agency v Kudan Singh Construction Limited Misc. Civil Application No. 171 of 2012** the court held inter alia that:

“Recognition and enforcement of arbitral awards both domestic and foreign is automatic under the provisions of section 36 of the Arbitration Act. The conditions set under section 37 of the Act have not been met to warrant this court not to recognize and enforce the award.”

Further, in the case of *Adrian Manubeli Meja v Trident Insurance Co. Ltd [2005] eKLR* the applicant sought for leave to enforce an arbitral award as a decree of the court under section 36 of the Act and Rules 4 and 6 of the Arbitration Rules 1997. The court observed that:

“I am satisfied that all the necessary provisions of the law have been complied with”

In the current scenario, I note the Arbitral Award as well as the Award for Costs were granted in favour of the Applicant. From a perusal of the instant application and the annexures thereon, I note the Award on costs dated the 24th August, 2020 and the original arbitration agreement has been filed in court as envisaged under section 36(3) of the Arbitration Act and Rule 4 (1) of the Arbitration Rules 1997. The Respondent has not sought to set the same aside nor controverted the averments herein. From the said legal provisions, in situations where the Award is not challenged, the Court cannot interfere with the same but is only expected to adopt and enforce it. Based on the circumstances at hand while relying on the legal provisions cited above as well as associating myself with the decisions I have quoted, I proceed to recognize, adopt and enforce the arbitral award dated 12th June, 2020 together with the award on costs dated 24th August, 2020 as an order of the Court. Since I have already adopted the same, I will hence proceed to grant leave to the Applicant to enforce the arbitral award dated the 12th June, 2020 and the award on costs dated 24th August, 2020 as a Decree of the Court.

It is against the foregoing that I find the application dated the 2nd September, 2020 merited and will allow it with costs.

Dated Signed and Delivered Virtually at Kajiado this 22nd Day of February, 2021.

CHRISTINE OCHIENG

JUDGE