



**Ahmed v Ngozi (Environment & Land Miscellaneous Case
E013 of 2025) [2025] KEELC 5067 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5067 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND MISCELLANEOUS CASE E013 OF 2025**

JO OLOLA, J

JULY 4, 2025

BETWEEN

KHAMIS KHALEF AHMED APPLICANT

AND

ABDALLA JUMAA NGOZI RESPONDENT

RULING

1. By the Notice of Motion dated 20th February, 2025, Khamis Ahmed Khalef Hamed (the Applicant) prays for an order that the Court be pleased to adopt the arbitral award dated 19th November, 2024.
2. The application which is supported by an affidavit sworn by the Applicant is premised on the grounds:
 - i. That both the Applicant and the Respondent entered into an agreement of sale of property being Plot No. 7871/l/MN C.R No. 22474 on the 18th February 2023;
 - ii. That thereafter arose a dispute which was referred to an arbitrator;
 - iii. That after hearing, deliberations, and with the consent of the parties herein, the said arbitrator entered an arbitral award on the 19th November 2024; and
 - iv. That the Applicant prays that the award be adopted as the judgment of the court and a decree be issued.
3. Abdalla Juma Ngozi (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 21st March, 2025, the Respondent confirms that he entered into a Sale Agreement dated 13th December, 2023 with the Applicant and that they entered into a consent before the arbitrator on 8th November, 2024.
4. The Respondent avers that before compliance with Order No. 5 of the consent, he was on 4th November, 2024 served with warrants of attachment issued in Mombasa CMCC No. 3388 of 2007;



- Randolph M. Tindika –vs- Khalif Hamed Ahmed indicating that the suit property had been attached for purposes of fulfilling a decree of Kshs. 7,395,524.65 in favour of Randolph M. Tindika. The Respondent avers further that on 25th November, 2024, the said Randolph M. Tindika obtained an order from the said Court restraining the Respondent from making any further payments to the Applicant.
5. The Respondents asserts that even though the Applicant received the sum of Kshs. 2,000,000/= for purposes of clearing the outstanding loan for motor vehicle registration number KDL 517T to the Kenya Commercial Bank (KCB), the Applicant failed to do so.
 6. It is the Respondent’s case that he was therefore forced to institute Mombasa CMCC No. E091 of 2025, Abdalla Jumaa Ngozi – vs- Khalef Hemed Ahmed & Another seeking:
 - a. A declaration that the intended repossession exercise of the Motor Vehicle known as KDL 517 T, Volkswagen is in all the circumstances illegal, wrongful, null and void;
 - b. An order that the 2nd Defendant confirms the amount which is outstanding with regard to the loan secured by the Motor Vehicle known as KDL 517 T, Volkswagen;
 - c. An order directing the 2nd Defendant and the National Transport and Safety Authority (NTSA) to transfer the Motor Vehicle known as KDL 517 T, Volkswagen to the Plaintiff and issue him with the original log book upon payment of the outstanding sum to the 2nd Defendant;
 - d. A Permanent Injunction restraining the Defendants by themselves, their agents and/or servants from repossessing, selling and/or (in) any other manner interfering with the motor vehicle registration number KDL 517 T, Volkswagen; and
 - e. Costs of the suit.
 7. The Respondent asserts that arising from the foregoing, he will have to clear the monies payable to KCB and pay any outstanding rent/rates arrears before releasing the balance to the Applicant or any other party as may be directed by the Court.
 8. The Respondent further avers that given the dispute between the Applicant and the said Randolph M. Tindika, it is unlikely that the Applicant will hand over the completion documents to himself if the outstanding balance was to be released to Randolph M. Tindika through an order of the Court.
 9. The Respondent asserts that given the circumstances, he did file Mombasa ELC. Case No. E014 of 2025 (OS) seeking a vesting order for the suit property. it is his prayer that even though he has no objection to the Arbitral award, this present application should be heard and determined together with the said ELC. Case No. E014 of 2025.
 10. I have carefully perused and considered the application and the response thereto. By his application before the court, the Applicant urges the court to be pleased to adopt the arbitral award dated 19th November, 2024. On the other hand, the Respondent avers that he has no objection to the arbitral award being adopted by the court save that given some proceedings which have since been filed against the Applicant by some third parties, he would rather the adoption proceedings be heard and determined together with another suit which he has since filed.
 11. As it were, under Section 32 (A) of the *Arbitration Act*, an arbitral award is final and binding upon the parties and no recourse is available against the award otherwise than in the manner provided by the Act.



12. Under Section 36 of the Act, this court has the power to recognize and enforce domestic arbitral awards in the following terms

“ 36.

- (1) A domestic arbitral award 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) ...
- (3) Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement must furnish—
 - a. the original arbitral award or a duly certified copy of it; and
 - b) the original arbitration agreement or a duly certified copy of it.”

13. Section 37 of the Act on the other hand provides for grounds upon which the court may decline to recognize and/or enforce an arbitral award at the request of the party against whom it is to be enforced. It provides as follows:

“ 37. The recognition or enforcement of an arbitral award, irrespective of the state in which it was made, may be refused only—

- a. At the request of the party against whom it is invoked, if that party furnishes to the High Court proof that;
 - i. a party to the arbitration agreement was under some incapacity or
 - ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made;
 - iii. the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - iv. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration, or it contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, that part of the arbitral award which contains decisions on matters referred to arbitration may be recognized and enforced; or



- v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement by the parties, was not in accordance with the law of the state where the arbitration took place; or
 - vi. the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which, or under the law of which, that arbitral award was made; or
 - vii. the making of the arbitral award was induced or affected by fraud, bribery, corruption or undue influence;
- b. If the High Court finds that:
- i. The subject-matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or
 - ii. The recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya.

14. In the matter herein, I note that Clause 19 of the Sale Agreement executed by the parties on 18th December, 2023 provided for any dispute arising to be referred to arbitration. It is also clear that both parties submitted themselves voluntarily to the arbitration process in line with the said provisions. The Respondent against whom the arbitration award is to be invoked does not dispute the validity of the award but appears to state that the enforcement thereof should await the determination of another suit which he has since filed.

15. Having considered the provisions of Section 37 of the *Arbitration Act*, I was unable to find any basis upon which the court can decline to recognize and/or enforce the arbitral award on the grounds advanced by the Respondent. The process of arbitration is itself resorted to by parties to avoid the usually long court processes and to stay an arbitral award to await the outcome of a suit filed after the arbitration process is concluded would in itself defeat the very purpose for which the parties resorted to arbitration.

16. The Applicant has met the pre-conditions for enforcement of the award as he has provided certified copies of the Sale Agreement dated 18th December, 2023 which contains an arbitration clause at Clause 19 thereto as well as a certified copy of the Final Arbitral Award arrived upon by the consent of the parties before Arbitrator Mulwa Nduya on 8th November, 2024.

17. In the premises I find merit in the Motion dated 20th February, 2025 and allow the same with no order as to costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 4TH DAY OF JULY, 2025

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J.O. OLOLA
JUDGE



In the presence of:

Ms. Firdaus Court Assistant.

Mr. Khalef Applicant in person

Mr. Mwanzia Advocate for the Respondent

