



**Junctions Apartments v CM Construction EA Limited & another (Commercial Arbitration Cause E030 of 2021) [2025] KEHC 1675 (KLR) (Commercial and Tax) (6 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1675 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL ARBITRATION CAUSE E030 OF 2021**

**A MABEYA, J  
FEBRUARY 6, 2025**

**BETWEEN**

**JUNCTIONS APARTMENTS ..... CLAIMANT**

**AND**

**CM CONSTRUCTION EA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN WANDEI OUNDO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. Vide a ruling dated 23/2/2023, this Court allowed the 1<sup>st</sup> respondent's application for adoption of the arbitrator's award. The orders were reviewed vide ruling dated 2/7/2024 by Chepkwony J who set aside the adoption orders under the provisions of section 80 and Order 45 of the Civil Procedure Rules on which the application was premised.
2. The Court found that there was apparent error on the face of the record and that the award lacked finality. That in such circumstances it could not be enforced as the Court's final judgment.
3. The parties did not seem to agree on the effect of the said ruling of Chepkwony J and the Court requested them to make submissions on the way forward. The applicant submitted that the dispute between the parties arose from the 1st respondent's breach of the agreement. That the decision of Chepkwony J demonstrated the failure of the Tribunal to render a final award effectively. That he was also unable to determine the issues of accounts to finality despite sufficient evidence being placed before him. That the arbitrator was incompetent and the applicant lacked faith in the arbitrator.
4. The applicant listed further grounds challenging the arbitrator's capacity to determine the matter conclusively and argued that the arbitrator has close association with the 1<sup>st</sup> respondent through Architect Manduku who had been supporting the 1<sup>st</sup> respondent. That there was conflict of



- interest and he also lacked impartiality. That he had set aside some apartments for himself after the determination of the matter.
5. That pursuant to section 10 as read with Section 35 of the *Arbitration Act*, there was no further action for the Court apart from referring the parties back to their chosen route of dispute resolution, Arbitration as per Clause 45 of the agreement. That an arbitrator should be appointed by the Architectural Association of Kenya.
  6. That retaining the 2<sup>nd</sup> respondent as the Arbitrator will be outstepping the Court's mandate and will also be unconscionable and unconstitutional. The applicant also sought the refund of 2/3<sup>rd</sup> of the fees. The Court should down its tools and refer the matter back to arbitration.
  7. On its part, the 1<sup>st</sup> respondent submitted that, the Court found that the award was incomplete and that it did not set aside the entire award. The Court also rejected the applicant's attack on the merits of the award and the allegations against the arbitrator's conduct. That an incompetent award is not a ground for setting aside an award under section 35 of the Act. That the Court has mandate to refer the matter back to the same arbitrator to determine the issues as per provisions of section 35.
  8. That the grounds and disputed paragraphs concern specific performance of the contracts, the defects list and preparation of final accounts. That these grounds were not sufficient to appoint a new arbitrator.
  9. I have considered the submissions of parties and the ruling of Chepkwony J. I find that the issues for determination are what is the effect of the ruling of 2/7/2024, what is the Court's mandate over an arbitrator's award and whether the court should order fresh arbitration.
  10. The applicant moved this Court vide application dated 13/1/2021 seeking to set aside the arbitral award. The Court declined the application finding that the applicant had failed to establish a viable ground for setting aside the award and that there was no reason for the arbitration to state before another arbitrator. That the award did not conflict any law and the issue of public policy did not arise.
  11. The Court allowed the application for adoption and consequently made it a judgment of the Court. The law is that a party aggrieved by the decision adopting an award or declining to set it aside must appeal, there is also very limited avenue for appeal.
  12. In *Anne Mumbi Hinga vs. Victoria Njoki Gathara Civil Appeal No. 8 of 2009*, the court held in part that: -

“The provisions of the *Arbitration Act* make it clear that it is a complete code except as regards the enforcement of the award/decreed where Arbitration Rules, 1997 apply the Civil Procedure Rules where appropriate. In the court's view, Rule 11 of the Arbitration Rules 1997 has not imported the Civil Procedure Rules line, hook and sinker to regulate arbitrations under the Act. It is clear to the Court that no application of the Civil Procedure Rules would be regarded as appropriate if its effects would be to deny an award finality and speedy enforcement both of which are major objectives of arbitration...”
  13. Section 10 of the Act particularly provides that the court intervention shall be in a manner that is provided by the Act.
  14. I have considered the record and the submissions of Learned Counsel. I find that the ruling delivered on 2/7/2024 did not impugn the arbitrator's capacity to determine the issues. The applicant's earlier application for setting aside the award was determined on 23/2/2023. This Court cannot re-open the matter.



15. I find that the Court's power under section 35 of the Act is limited and it cannot be used to reopen the entire case. This is further to the allowing parties the benefit of the doctrine of finality of the arbitration process.
16. In my view, the provisions of section 35 (4) of the Act appropriately resolves the situation as it provides that: -

“The High Court, when required to set aside an arbitral award, may, where appropriate and if so requested by a party suspend the proceedings to set aside the arbitral award for such period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of the arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”
17. In this case, the court adopted the award with reservation. These reservations and faults can be amended by further action by the same arbitrator.
18. The applicant contends that the issues before Court are subject to sections 35 and 36 of the Act of the Act as read with section 10 thereof which cautions courts to only interfere with matters arbitral as allowed by the Act. This Court is bereft of any jurisdiction to deal with the matter otherwise than allowed by law.
19. Since Chepkwony J found that the award was not final, it is only just to remit the matter back to the arbitrator to comply with the directions of Chepkwony J. and determine the matters set out in determination nos. 3 and 4 of the award with finality.

It is so ordered.

**SIGNED AT NAIROBI THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

**DATED AND DELIVERED AT NAIROBI THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**F. GIKONYO**

**JUDGE**

