



**Galana Oil Kenya Limited v Nanchang Municipal Engineering Development Group
Company Kenya Limited & another (Miscellaneous Application E204 of 2023)
[2025] KEHC 3154 (KLR) (Commercial and Tax) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3154 (KLR)

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

MISCELLANEOUS APPLICATION E204 OF 2023

PM MULWA, J

MARCH 13, 2025

BETWEEN

GALANA OIL KENYA LIMITED APPLICANT

AND

**NANCHANG MUNICIPAL ENGINEERING DEVELOPMENT GROUP
COMPANY KENYA LIMITED 1ST RESPONDENT**

SANYI JITUAN SENSEN INVESTMENTS LIMITED 2ND RESPONDENT

RULING

1. There are two applications for determination; the first one is the applicant's application dated 18th September 2023 and it seeks the adoption of an arbitral award published on 18th May 2023 as a decree and order of this court. The second application is by the 1st respondent dated 13th November 2023 seeking an order to set aside the decision of the arbitrator dated 23rd October 2023 and the award dated 15th May 2023.
2. The first application is based on the grounds that pursuant to a dispute between the parties herein over a contract for the construction and maintenance of Soy-Sereka-Kilimani-Turbo Bridge Road, the parties voluntarily submitted themselves to arbitration; that arbitral proceedings ensued and each party presented its case and consequently the tribunal issued its final award on 18th May 2023.
3. The applicant sought to have the final award adopted as a judgement of the court and stated that the respondents had failed to settle the award despite knowledge of the award and its admission of liability to settle the same necessitating enforcement proceedings.



4. The applicant pleaded that it had suffered incalculable and irredeemable business losses as it had been put out of its earning for an unconscionable length of time and prayed to have the application granted.
5. The 1st respondent opposed the application vide a replying affidavit sworn on 3rd November 2023 by its Chief Executive Officer.
6. He averred that the tribunal failed to appreciate that by finding the Diesel Purchase Agreement invalid and unenforceable against the parties for want of execution and without an express agreement that the arbitration clause was severable from other clauses of the agreement, then the tribunal's jurisdiction abated and that there was need for clarification on the tribunal's finding that it did not have jurisdiction to determine the counterclaim and the cross claim yet went ahead to determine the merits of the dispute.
7. Further that the arbitrator arrived at the conclusion that there existed an implied contract but without clear findings as to who the parties were.

Analysis and determination

8. The parties canvassed their arguments through written submissions; for the applicant dated 30th January 2024 and for the 1st respondent dated 18th September 2024.
9. I note that the 1st respondent's application dated 13th November 2023 which seeks to set aside the arbitral award of 18th May 2023 is based on the same grounds that it raised in its replying affidavit in opposition to the application dated 18th September 2023 which seeks to enforce the award.
10. It is undisputed that the parties entered into a contract known as a 'Diesel Purchase Agreement' for the upgrading and maintenance to bitumen standard of Soy-Sherekea-Kilimani-Turbo bridge road. A dispute arising from the agreement occurred and the parties submitted the same to arbitration as per the arbitration clause in the agreement. A copy of the contract is produced and marked as "2" in the applicant's supporting affidavit.
11. The applicant and the 1st respondent participated in the arbitration proceedings. The tribunal published its final award on 15th May 2023 stating that although the Diesel Purchase Agreement was unenforceable as against the parties as it was not properly executed, there existed an implied contract between the parties due to their conduct. A copy of the award is produced and marked as "4" in the applicant's supporting affidavit.
12. The grounds for setting aside an arbitral award are set out under Section 35(2) of the [Arbitration Act](#), as follows:

“An arbitral award may be set aside by the High Court only if-

- (a) The party making the application furnishes proof-
 - (i) that 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, the laws of Kenya; or



- (iii) the party making the application 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 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, only that part of the arbitral award which contains decisions on matters not referred to arbitration may be set aside; or
 - (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate; or failing such agreement, was not in accordance with this Act; or
 - (vi) the making of the award was induced or affected by fraud, bribery, undue influence or corruption;
- (b) 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 award is in conflict with the public policy of Kenya.”

13. The 1st respondent’s opposition to the instant application and its grounds for setting aside the agreement are anchored on its argument that the tribunal erred in assuming it had jurisdiction to determine the dispute before it despite the fact that it had found the agreement between the parties unenforceable as it had not been properly executed. The 1st respondent found fault in the tribunal’s finding that the parties had an implied contract based on their business conduct between themselves.

14. The 1st respondent’s grounds do not align with those listed under section 35 of the *Arbitration Act* for the setting aside of an arbitral award.

15. In *Geo Chem Middle East v Kenya Bureau of Standard 2020 eKLR* it was held:

“It is not the function nor the mandate of the High Court to re-evaluate such decisions of an arbitral tribunal, when the Court was called upon to determine whether or not to set aside an award...if the Court were to delve into the task of ascertaining the correctness of the decision of an arbitrator, the Court would be sitting on an appeal over the decision in issue. In light of the public policy of Kenya, which loudly pronounces the intention of giving finality to arbitral awards, it would actually be against the said public policy to have the Court sit on an appeal over the decision of the arbitral tribunal.”

16. I concur with the authority above. The 1st respondent is dissatisfied with the arbitrator’s award but its grounds are not sufficient to set aside the award as stipulated under Section 35 of the *Arbitration Act*. This court will not reevaluate the findings of an arbitration award and would only interfere under the strict circumstances set out in the *Arbitration Act*.



17. The upshot of the foregoing is that the 1st respondent has not raised sufficient grounds to set aside the award.
18. Consequently, there being no grounds to warrant the setting aside of the award, the court shall enforce the same as set out under Section 37 of the [Arbitration Act](#) and as prayed by the applicant.
19. The first application dated 18th September 2023 is granted as prayed while the second application dated 13th November 2023 is dismissed with costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 13TH DAY OF MARCH 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Kihan'ga for Decree-holder

Mr. Ndegwa h/b for Ms. Nyambura for Respondent

Court Assistant: Carlos

