



Haba Compounding Capital Limited v Aifluence Limited (Miscellaneous Application E974 of 2024) [2025] KEHC 3517 (KLR) (Commercial and Tax) (20 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E974 OF 2024**

**F GIKONYO, J
MARCH 20, 2025**

BETWEEN

HABA COMPOUNDING CAPITAL LIMITED APPLICANT

AND

AIFLUENCE LIMITED RESPONDENT

RULING

1. Before me is the chamber summons dated 28th October 2024, expressed to be brought under Section 36 of the *Arbitration Act*, Order 46 rule 18(1) of the Civil Procedure Rules, Rules 6,9, and 11 of the Arbitration Rules, seeking:-
 1. That the Consent Award dated and published at Nairobi on the 29th day of July 2024 by Prof. Paul Musili Wambua, LL. D FCIArb (sole arbitrator) between the parties herein be recognised, adopted, enforced as a decree of the court.
 2. That each party shall bear their own costs.
2. The grounds for the application are set out in the application and the supporting affidavit sworn by the applicant's director Teddy Onserio on 28th October 2024.
3. The grounds are That through a Working Capital Loan Agreement dated 26th July 2022, the applicant lent the respondent United States Dollars One Hundred and Twenty Thousand (USD 120,000) at a rate of 4.7% on a reducing balance. The respondent breached the terms of the agreement by failing to repay monies advanced by the Loan Repayment Date. The applicant made several demands to the respondent to pay the outstanding payments through email correspondence and demand letters dated 17th July, 2023, 4th August, 2023 and a Notice of Mediation dated 21st August, 2023 to no avail.



4. The parties failed to resolve the dispute through mediation. Consequently, Prof. Paul Musili Wambua, LL.D FCIArb, was appointed on 4th April 2024 to arbitrate the matter. Afterwards, the parties settled the dispute through their legal representatives.
5. After the appointment of the Arbitrator, the parties signed a Mutual Settlement Agreement dated 24th June 2024. The Arbitrator then prepared a consent award, published on the 29th July 2024.
6. The applicant asserted That both parties were fully aware of the arbitration process and actively engaged in it; That the award has never been challenged or otherwise disputed since its delivery and That therefore, in the interest of justice That this application be allowed.

Highlighting

7. When the matter came up for highlighting on 13th February 2025, Mr. Macharia appeared for the applicant while the respondent's director, Mr. Aseka, appeared in person.
8. Mr. Aseka confirmed That the parties arrived at the settlement and That there is no objection from the respondent to the present application.

Analysis and determination

9. I have considered the application, the grounds, the supporting affidavit and the submissions. The issue is whether the award should be recognized and enforced in accordance with Section 36 of the [Arbitration Act](#) which provides: -
 36. Recognition and enforcement of awards
 - (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.
10. The applicant exhibited a copy of the Working Capital Loan Agreement dated 26th July 2022 containing an arbitration agreement under clause 13 and a copy of the Consent Award dated and published at Nairobi on 29th July 2024 by Prof. Paul Musili Wambua, LL. D FCIArb.
11. The respondent confirmed That it has no objection to recognition and enforcement of the consent award. The applicant stated That the award has never been challenged or otherwise disputed. This statement is an averment That there is no pending application under section 35 of the [Arbitration Act](#) to set aside the arbitral award.

Quite disturbing trend

12. The averment That there is no pending application under section 35 of the [Arbitration Act](#), should be an integral part of, and an important expression by the parties in an application for recognition and enforcement of an arbitral award under section 36 of the [Arbitration Act](#), because quite disturbing scenarios have been encountered where an order for recognition and enforcement of the award under section 36 is made, whilst an application under section 35 of the [Arbitration Act](#) for setting aside the



award is pending. Yet, the parties did not disclose this fact to the court. Causing great confusion and painful migraine to the judge on how to deal with the situation especially where the application for setting aside the award was filed within time, and in most cases, preceded the one for recognition. Things get complicated. One party asserts on the order of recognition and enforcement of the award and roots for the ugly situation to remain in situ. The other, claims constitutional right to be heard and fair trial. Such situation requires absolute pragmatic approach to unravel the quagmire created by the parties, yet upholding the law. Applications under section 35 and 36 of the *Arbitration Act* are the two sides of the same coin; and should be heard together, except the court determines the one for setting aside the award first. Therefore, suggested options to alleviate the scenario I have alluded to, include; review or setting aside or tapping the rule on ex debito justitiae. Arguing for an appeal may be oblivious of the objectives of the law and the need to respect party autonomy.

Conclusion and orders

13. In this case, I am persuaded That the applicant has met the prerequisites for recognition and enforcement of the consent award under section 36 of the *Arbitration Act* as order of the court. There is no ground for refusal of such recognition or enforcement of the award under section 37 of the *Arbitration Act*.
14. The consent award herein, being a domestic arbitral award, is recognized as binding and, following the application in writing to this Court, it shall be enforced as the order of this court under section 36 of the *Arbitration Act*.
15. Accordingly, the chamber summons dated October 28, 2024 is allowed.

DATED, SIGNED AND DELIVERED THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 20TH DAY OF MARCH, 2025.

F. GIKONYO M

JUDGE

In the presence of: -

Macharia for Applicant

Nelson Aseka for Defendant

CA - Kinyua

