



Isat Africa Kenya Limited v Smart Media Colleges Limited (Commercial Arbitration Cause E028 of 2024) [2025] KEHC 2666 (KLR) (Commercial and Tax) (6 March 2025) (Ruling)

Neutral citation: [2025] KEHC 2666 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL ARBITRATION CAUSE E028 OF 2024**

**MA OTIENO, J
MARCH 6, 2025**

BETWEEN

ISAT AFRICA KENYA LIMITED CLAIMANT

AND

SMART MEDIA COLLEGES LIMITED RESPONDENT

RULING

Introduction

1. Before the court for determination is the applicant's chamber summons application dated 13/5/2024 filed pursuant to section 36 of the Arbitration Act and rule 9 of the Arbitration Rules 1997. In the application, the Applicant prays for an order to recognize and adopt the Final Arbitral Award dated 9/3/2023 and the award on costs dated 17/1/2024 by Mr. Azim Taibjee.
2. The application is premised on the grounds set out in its body and the supporting affidavit sworn by Faith Njoroge, the applicant's country manager.
3. The grounds were that the parties entered into a service agreement whereby the applicant provided infrastructural services to the respondent. A disagreement emanating from the agreement was referred to arbitration.
4. Upon considering the dispute before it, the arbitrator published an award dated 9/3/2023, awarding the applicant USD 96,776.25 plus interest. Further, the arbitrator delivered an additional award on costs dated 17/1/2024 in favour of the applicant in the sum of Kshs.564,142.60.
5. The applicant contends that the respondent failed to pay the amount awarded, and therefore, it now seeks to have the award recognized in order to have the award enforced as a decree of this court as against the respondent.



6. At the time of writing this ruling, the respondent had not filed any response in these proceedings opposing the instant application.

Analysis and Determination:

7. The applicable law is Section 36 of the *Arbitration Act* which sets out the legal parameters governing the enforcement and adoption of an arbitral award in the following terms; -

“ 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 shall 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.

8. In *Samura Engineering Limited v Don-Wood Co Ltd* [2014] eKLR it was held: -

“Of course, section 36(1) of the Act requires an application in writing for recognition and enforcement of an award to be made. But, the application is subject to sections 36 and 37 of the Act, and I should add, to the Constitution. Section 36(3) of the Act makes it mandatory that the party applying for recognition and enforcement of the award should file;

- 1) the duly authenticated original award or a duly certified copy of it; and
- 2) the original arbitration agreement or certified copy of it. Doubtless, the award must be filed...”

9. In the instant case, having carefully reviewed the Applicant’s notice of motion application together with the supporting affidavit and its attachments, I find that the Applicant has met the preconditions set under Section 36 of the *Act* for the enforcement of the award.

10. Ordinarily, the onus would have shifted to the Respondent to demonstrate why the award should not be adopted. However, the Respondent having failed to file any response to the application, the application is essentially unopposed.

11. It is however important to note that Section 37 of the *Arbitration Act* guides the court in determining whether or not it should recognize and enforce an award. The Section provides as follows; -

“ 37. Grounds for refusal of recognition of enforcement

1. 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 recognised 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."

12. In the instant case, the Respondent, being the person against whom it is invoked, has not furnished this court with any proof under Section 37 (1) (a) as to why the arbitral award should not be recognized. Further, this court has equally not found any reason to believe that the subject matter of the dispute is not capable of settlement by arbitration under the law of Kenya or that the recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya.

13. Consequently, I find that the application dated 13th March 2024 is merited, and I therefore allow it with costs to the Applicant.

14. It is so ordered.

SIGNED DATED AND DELIVERED IN VIRTUAL COURT THIS 6TH DAY OF MARCH, 2025

ADO MOSES

JUDGE

In the presence of: -

C/A – Moses

