



REPUBLIC OF KENYA



**Mwakima v Solfin Solutions Limited (Miscellaneous Civil Application
E053 of 2024) [2025] KEHC 4589 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CIVIL APPLICATION E053 OF 2024**

AN ONGERI, J

APRIL 8, 2025

IN THE MATTER OF THE ARBITRATION ACT, NO. 4 OF 1995

AND

**IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT
OF THE ARBITRATION AWARD BY ALI MANDHRY**

BETWEEN

MARGARET WAWUDA MWAKIMA APPLICANT

AND

SOLFIN SOLUTIONS LIMITED RESPONDENT

RULING

1. The Applicant Margaret Wawuda Mwakima filed HCMISC No. E053 OF 2024 against Solfin Solutions Ltd seeking orders that the Arbitrator's Final Award dated 6th November 2024 be recognized and enforced in accordance with the provisions of Section 36(1) of the *Arbitration Act*, 1995 and that the decree to issue accordingly.
2. The Respondent Solfin Solutions Limited also filed HCMISC Case No. E004 of 2025 seeking orders that the said Arbitral Final Award dated 6th November 2024 be set aside in accordance with the provisions of the *Arbitration Act* 1995.
3. Both parties also prayed that costs of the applications be provided for.
4. The two suits were consolidated and will be considered in the holding file HCMISCNo. E053 of 2024.
5. The applicant in HCMISC No. E053 of 2024 filed a supporting affidavit dated 13/11/2024 in which she deposed that by virtual of Financing Agreements entered into on 16/8/2023 and on 30/9/2023, the



parties agreed that in the event of a dispute, the same shall be referred to Arbitration after a mediation attempt.

6. That a dispute arose and when mediation failed the same was referred to Arbitration and an Arbitrator Mandhry was duly appointed by the parties.
7. Further, that the matter was determined by the Arbitrator and a final award dated 6/11/2024 was arrived at by the Arbitrator.
8. That the applicant in in HCMISC No. E053 OF 2024 is seeking the adoption of the said award by this court.
9. The Applicant in HCMISC E004 of 2025 who is the respondent in in HCMISC No. E053 of 2024 is seeking the setting aside of the said Arbitral Award and has also filed a supporting affidavit sworn by Nabil Adamjee on 27th January 2025 in support of their application dated 27/1/2025 in which it is deposed as follows:-
 - i. That I am a male adult, officer and Director of Solfin Solutions Ltd competent and duly authorized to swear this affidavit on its behalf and on my own behalf as I hereby do.
 - ii. That I am advised by my advocates on record that the said award was made contrary to public policy, and the Arbitrator acted contrary to established principles of law; and is fit for setting aside.
 - iii. That the Arbitrator demonstrated open bias by failing to consider the defense on record and evidence that the Claimants testimony was materially controverted in cross examination
 - iv. That am advised by my advocates on record which advise believe accurate that the grounds for refusal of recognition of enforcement as set out in Sections 35 and 37 of the Arbitration Act of 2005 have been met.
 - v. That more particularly the Award fundamentally departs from the law and legal norms as outlined hereunder.
 - a. The arbitrator did not exercise his judgement according to the facts of the case. That the Arbitrator exhibited open bias by making a decision without taking into account the defense on record and arrived at a decision that is against applicable principles of law. the Defense traversed all the allegations in the statement of claim and Counterclaimed for [i] Damages for Breach of Contract. [ii] Damages Defamation of character [ii] Loss of business; which if factored in would have set off and substantially reduced the amount of the award.
 - b. The Arbitrator ignored pertinent issues that emerged at the hearing to make a just determination; including relying heavily upon the evidence of the complainant; proved to be untruthful upon cross examination; it was established she never in fact met the respondent's Director Nabil Adamjee and was merely a proxy for her husband who had initiated contact by approaching the respondent while making a presentation at 1 a11 a Investment Development Corporation with a corrupt offer in breach of the Public Officers Ethics Act Cap 183, Laws of Kenya. The award is therefore against Public Policy
 - c. The Arbitrator ignored the fact that the claimant's allegations were controverted in cross-examination in particular allegations that she was personally known to the defendant's director were proved to be false and she could not clearly explain the



circumstances under which they allegedly had their first meeting or reached 'consensus ad litem' to enter into a contract without any kind of prior association whatsoever.

- d. The Arbitrator failed to note the Claimant's failure to give a reasonable explanation as to how she and her husband could possibly use on 'uber' taxi to visit the defendant's premises as part of 'due diligence' and merely stand outside the company offices door at Ambalal house, Mombasa CBD then drive back to Taita.
 - e. The Arbitrator failed to factor that the Respondent's operational expenditure incurred in the running of the joint venture which is a cost borne by both parties and should have been set-off
 - f. The Arbitrator failed to consider that the Claimant breached principles of conflict of interest by public officials making the contract illegal for want of capacity and 'entrapment, breach of public policy rendering the contract invalid and unenforceable.
 - g. The Arbitrator in his Award failed to consider the Claimant breached the principles of PrIvIty of Contract, confidentiality and defamation by engaging in acts that destroyed Respondents reputation with its principal business partner Devk1 Steel Ltd resulting in its suspension and blacklisting as well as publishing false and misleading stat.ements to the police which eventually led to frustration of the contract and closure of the mining site altogether
 - h. The arbitrator failed to appreciate the claimant's evidence was totally unreliable and it was in fact her husband responsible for all ensuing losses arising from closure of the mining site in Vo1 in January 2024 through his 'untoward actions.
 - i. The totality is that the Award was based on a skewed analysis of the facts and the law the Arbitrator abdicated his responsibility to weigh the evidence; and Award is fit for setting aside.
 - j. The actions of the Arbitrator amounted to abuse or misuse of power and vitiated the award, rendering it null and void in limine.
- vi. That it is clear the Arbitrator failed to treat the parties with equality evinced a lack of impartiality or independence and or bias.
 - vii. That in the premises the Arbitrator made an error apparent on the face of the record by failing to find that the agreement founding the contract was vitiated by Illegality, Conflict of Interest. Frustration and the claimant was Estopped for Lack of Capacity making it null and void ab initio and is therefore un-enforceable.
 - viii. That the learned Arbitrator in his award failed to consider and appreciate that in the totality of circumstances the contract was frustrated by factors beyond the Respondents control raising doubts as to his capacity.
 - ix. That the Arbitrator failed to appreciate that the Respondent maintained it fulfilled his obligations in the material times to the greatest extent possible.
 - x. That the Arbitrator made an award against the weight of the evidence and allowed a claim that did not meet the required standard of proof, raising doubts about his impartiality or independence.



- xi. That I am advised by my advocates on record which advise I believe accurate that the 3month duration provided by law for making an application to set aside the Arbitral award dated 6.11.24 is set to expire on 6.2.25 hence the urgency of this application.
 - xii. That I have applied for certified copies of impugned proceedings and look forward to attaching the same in a supplementary affidavit.
 - xiii. That I humbly pray that based on the evidence thus adduced, this honorable court be pleased to set aside the impugned award published on 6.11.2024. .
 - xiv. That am further advised by my advocates on record which advise I believe correct that as a result of the foregoing the Award failed to comply with constitutional principles and values and was therefore unprocedural.
10. The respondent in HCMISC No. E053 of 2024 did not file any submissions in the consolidated files.
 11. The applicant in in HCMISC No. E053 of 2024 filed written submissions as follows:-
 12. That the dispute arose from three Financing Agreements entered into between (August–September 2023) where the applicant advanced Ksh 4,025,000 to the respondent for supplying dolomite ore to Devki Steel Limited.
 13. That the respondent agreed to repay the principal plus fixed profits (Ksh 400–450 per metric ton) at specified intervals.
 14. That the respondent defaulted, paying only Ksh 600,000 (partial profits) and failing to refund the principal or remaining profits (Ksh 1,884,375 owed).
 15. That the dispute was referred to arbitration as per the agreements, and Arbitrator Ali Mandhry issued a final award dated 6th November 2024 in favor of the applicant.
 16. That the applicant now seeks court enforcement of the award under Section 36(1) of the [Arbitration Act](#).
 17. The applicant further submitted that the [Arbitration Act](#) (Section 32A) states that arbitral awards are final and binding with no recourse except under the Act.
 18. Further that Courts should not interfere with arbitration awards unless exceptional grounds exist (e.g., fraud, public policy violation).
 19. The applicant cited the cases of [Kenya Shell Ltd v Kobil Petroleum Limited](#) NRB CA Civil Appl. No. 57 and [Nyutu Agrovet Limited v Airtel Networks Limited](#) [2015] eKLR in support of the finality of arbitral awards and limits of judicial intervention.
 20. The applicant urges the court to recognize and enforce the arbitral award as a court decree under Section 36(1) of the [Arbitration Act](#).
 21. The Respondent who is the applicant in HCMISC Case No. E004 of 2025 is seeking to have the Arbitral Award set aside under section 35 of the [Arbitration Act](#). He did not file any submissions in support of the application dated 27th January 2025.
 22. The respondent in HCMISC Case No. E004 of 2025 who is the applicant in HCMISC NO. E053 OF 2024 further submitted as follows in HCMISC Case No. E004 of 2025
 23. That the Respondent opposes the Applicant’s motion in HCMISC Case No. E004 of 2025 that arguing it lacks merit.



24. Further, that the Applicant failed to specify how the award offends public policy.
25. That courts cannot intervene unless the *Arbitration Act*'s limited grounds (Sections 35 & 37) are met.
26. That the Applicant is attempting to re-litigate facts already decided by the Arbitrator, contrary to the *Arbitration Act*'s restrictions.
27. That this is a delay tactic meant to infringe the Respondent's right to benefit from the award.
28. The issues for determination in the consolidated applications are as follows
 - i. Whether the Arbitral awarded dated 6/11/2024 should be set aside.
 - ii. If not, whether it should be adopted as the order of this court.
29. Section 35 provides as follows;

“Part VI – Recourse to High Court Against Arbitral Award

35. Application for setting aside arbitral award

- (1) Recourse to the High Court against an arbitral award may be made only by an application for setting aside the award under subsections (2) and (3).
- (2) 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

iv. 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.

(3) An application for setting aside the arbitral award may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award, or if a request had been made under section 34 from the date on which that request had been disposed of by the arbitral award.

(4) 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.”

30. In the current case, I find that the applicant in HCMISC Case No. E004 of 2025 has not furnished any proof that he was under some incapacity; or that the arbitration agreement is not valid under the law to which the parties have subjected it or the laws of Kenya.

31. There is no evidence that the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or that he was otherwise unable to present his case.

32. I find that the arbitral award deals with a dispute which was contemplated by the parties and that they voluntarily referred the case to Arbitration in accordance with their agreement.



33. I find that the composition of the arbitral tribunal or the arbitral procedure was in accordance with the agreement of the parties.
34. I find that a party is entitled to challenge an Arbitrator under Section 13 of the [Arbitration Act](#) provides as follows;

“ 13. Grounds for challenge

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
- (2) From the time of his appointment and throughout the arbitral proceedings, an arbitrator shall without delay disclose any such circumstances to the parties unless the parties have already been informed of them by him.
- (3) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality and independence, or if he does not possess qualifications agreed to by the parties or if he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so.
- (4) A party may challenge an arbitrator appointed by him, or in whose appointment that party has participated, only for reasons of which he becomes aware after the appointment.’

35. Section 14 provides for the procedure as follows;

“ 14. Challenge procedure

- (1) Subject to subsection (3), the parties are free to agree on a procedure for challenging an arbitrator.
- (2) Failing an agreement under subsection (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the composition of the arbitral tribunal or after becoming aware of any circumstances referred to in section 13 (3), send a written statement of the reasons for the challenge to the arbitral tribunal, and unless the arbitrator who is being challenged withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (3) If a challenge under agreed procedure or under subsection (2) is unsuccessful, the challenging party may, within thirty days after being notified of the decision to reject the challenge, apply to the High Court to determine the matter.
- (4) On an application under subsection (3), the arbitrator who was challenged shall be entitled to appear and be heard before the High Court determines the application.



- (5) The High Court may confirm the rejection of the challenge or may uphold the challenge and remove the arbitrator.
- (6) The decision of the High Court on such an application shall be final and shall not be subject to appeal.
- (7) Where an arbitrator is removed by the High Court under this section, the court may make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.
- (8) While an application under subsection (3) is pending before the High Court, the parties may commence, continue and conclude arbitral proceedings, but no award in such proceedings shall take effect until the application is decided, and such an award shall be void if the application is successful.”

36. I find that the parties are free to agree on a procedure for challenging an arbitrator.
37. Failing an agreement under subsection (1), a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the composition of the arbitral tribunal or after becoming aware of any circumstances referred to in section 13(3), send a written statement of the reasons for the challenge to the arbitral tribunal, and unless the arbitrator who is being challenged withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
38. I find that the applicant in HCMISC E004 of 2025 did not follow the laid down procedure to challenge the Arbitrator and I accordingly dismiss the application dated 27th January 2025 with costs to the respondent.
39. The application dated 13th November 2024 is allowed in the following terms;
 - i. That the Arbitral Award dated 6/11/2024 be and is hereby recognized and the same to be enforced in accordance with the provisions of Section 36 (1) of the *Arbitration Act* 1995.
 - ii. That a decree to issue accordingly.
 - iii. That the respondent to pay the costs of the consolidated applications.

DATED, SIGNED AND DELIVERED THIS 8TH APRIL 2025 IN OPEN COURT AT VOI.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistants: Maina/Millicent

Mr. Omullo for the Applicant

Mr. Chianda for the Respondent-absent

