



Maiyo v Muranda t/s Jems Consultancy (Miscellaneous Application E248 of 2024) [2025] KEHC 4368 (KLR) (4 April 2025) (Ruling)

Neutral citation: [2025] KEHC 4368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS APPLICATION E248 OF 2024
RN NYAKUNDI, J
APRIL 4, 2025
IN THE MATTER OF THE ARBITRATION ACT, 1995
AND IN THE MATTER OF AN ARBITRATION BETWEEN PHILIP CHERUIYOT
MAIYO AND JAMES MURANDA OPIYO T/A JEMS CONSULTANCY**

BETWEEN

PHILIP CHERUIYOT MAIYO CLAIMANT

AND

JAMES MURANDA T/S JEMS CONSULTANCY RESPONDENT

RULING

1. The Application before this court is expressed to be brought pursuant to Section 36 and 37 of the *Arbitration Act*, 1995 and Rule 9 of the Arbitration Rules, 1997 and all other enabling provisions of the law. The mover seeks the following order:
 - a. That the arbitral award made on 23rd August 2024 by Godfrey Nathan Kitiwa in the Arbitration proceedings between the claimant/Applicant and the Respondent be recognized and adopted as a decree of this Honourable court
 - b. That the costs of this application be provided for which application is based on the following grounds:
 - a. The Applicant and the Respondent were parties to an Arbitration agreement dated 14.11.2023
 - b. That pursuant to the said Arbitration agreement, a dispute arose between the parties and was referred to Arbitration



- c. That the Arbitrator, Godfrey Nathan Kitiwa after hearing the dispute, rendered a final arbitral award on 23rd August 2024
- d. That no application to set aside the said arbitral award has been made by the Respondent within the time provided for under Section 35 of the [Arbitration Act](#).
- e. That the arbitral award is final and binding on both parties and capable of being enforced as a decree of the court.
- f. That it is in the interest of justice that the arbitral award be recognized and enforced by this Honourable Court

and which application is further supported by the annexed affidavit of Phili Chruiyot Maiyo and upon such grounds to be adduced at the hearing thereof

- a. That I am the Claimant/Respondent herein, hence competent to swear this affidavit
- b. That the Respondent and I entered into an agreement dated 14.11.2023 which contained an Arbitration clause (annexed and marked PCM I is a copy of the agreement)
- c. That a dispute arose between the Respondent and I which was referred to Arbitration
- d. That the Arbitrator Godfrey Nathan Kitiwa after hearing the dispute rendered a final arbitral award on 23rd August 2024
- e. The Respondent has not applied to set aside the arbitral award within the stipulated time under the [Arbitration Act](#), 1995
- f. That it is just and expedient that the arbitral award be recognized and enforced as a decree of this Honourable court
- g. That the Application herein has been made timeously, with the promptitude and in good faith.
- h. That I now swear this affidavit in support of the Application herein seeking the arbitral award to be recognized and enforced as a decree of this Honourable court
- i. That what is stated hereinabove is true and within my knowledge, information and belief.

2. From the record the parties in the matter of the dispute in consonant with Article 1(2) (c) of [the constitution](#) as read with Section 36 & 37 of the [Arbitration Act](#) this court exercises jurisdiction to adopt the following final Arbitral award dated 23.8.2024

- 1. The Claimant's claim is that on or about 14th November 2023 the parties entered into an agency agreement wherein it was agreed that the Respondent would secure employment for the Claimant in Norway on the terms and for the consideration stated in the agreement.
- 2. It is the Claimant's case that the contract was executed following extensive discussions between the parties and it was agreed that the Respondent would fulfill his obligations under the contract within a period of two months.



3. The Claimant contends that it was a term of the agency agreement that the Claimant will pay to the Respondent a sum of Kshs.200, 000/= and the Respondent was to secure a Norwegian work Visa as well as an offer of employment complete with air ticket for the Claimant. The Respondent promised to secure a minimum two-year work contract renewable with a monthly pay of 2,000 euros being the minimum wage in Norway.
4. According to the Claimant he honoured his part of the agreement by paying the sum of Kshs.200, 000/= to the Respondent.
5. The Claimant contends that the Respondent failed to honour his part of the agreement by failing to secure a Visa and employment offer from Norway as promised.
6. The Claimant contends further that the Respondent requested him to pay a further sum of Kshs.50, 000/= to be absorbed by the Respondent in the Slovakia cohort.
7. The Claimant instead opted for a refund which the Respondent has failed to make.
8. The Claimant seeks the following reliefs:- a) A declaration that the Respondent is in breach of the agreement dated 14th November 2023. b) Refund of Kshs.200, 000/=. c) General damages. d) Costs of these proceedings. e) Interest on (b) and (c) above from the date of filing this claim.
9. The Respondent filed a response to the Claimant's claim. In the statement of claim, the Respondent denies entering into an agency agreement dated 14th November 2023 and further denies having agreed to secure employment for the Claimant in Norway on the terms and for the consideration stated in the agreement.
10. On a without prejudice to the denial, the Respondent avers that the agency agreement entered into by the parties did not specify that the Claimant was to go to Norway, that the Claimant only made a payment of Kshs.115, 000/= which amount was expended, that the Claimant enrolled in an ongoing programme for Czechia and Slovakia which is ongoing and therefore the issue of a refund does not arise and further that the Claimant declined to take up his position in the ongoing programme.
11. The Respondent agreed to go by the issues framed by the Claimant for my consideration.
12. When the dispute arose, this matter was referred to me pursuant to paragraph 4 of the agency agreement which provides inter alia that "save as may be hereinabove otherwise specifically provided all questions hereafter in dispute between the parties hereto and all claims for compensation or otherwise not mutually settled and agreed between the parties shall be referred to arbitration by a single arbitrator being a practicing advocate of the High court of Kenya of not less than ten (10) years."
13. When the matter came up for directions before me on 1st of July 2024 the parties agreed on the jurisdiction of the arbitrator, the applicable law and further agreed to proceed by way of viva voce evidence. The parties also agreed that the arbitrator will be paid Kenya shillings five thousand per hour.
14. When the matter came up for hearing on 26th of July 2024 a date that had been agreed upon by all the parties, the firm of Mwinamo Lugonzo and Company Advocates acting for the Respondent indicated that they no longer have instructions to act for the Respondent. I directed them to file an application to that effect and serve their client.



15. This matter proceeded for hearing on 16th of August 2024 in the absence of the Respondent who despite having been served with a hearing notice did not attend court.
16. CW1 the Claimant adopted his witness statement dated 27th March 2024 as his evidence in court. The statement is elaborate and self-explanatory.
17. CW2 Rurii Charles an Advocate of the high court of Kenya did also testify on behalf of the Claimant. In his testimony he testified that he drafted an agreement dated 14th November 2023. He stated that it was an agency agreement between the Claimant and the Respondent. He stated that the agreement was signed after the Claimant paid money to the Respondent. He produced the agreement as Claimant's Exhibit 1.
18. The Claimant thereafter closed his case.

Analysis Of Evidence

19. In analyzing the evidence on record, the following issues arose for determination:- a) Whether the parties entered into an agency agreement. b) Whether the Respondent is in breach of the terms and conditions of the agreement. c) Whether the Claimant is entitled to the reliefs claimed. d) Who should pay the costs of this arbitration and how much?
20. On the first issue of whether the parties entered into an agency agreement, the Respondent indeed admits in his witness statement that he entered into an agency agreement with the Claimant. This fact was also corroborated by the evidence of the advocate who drew and witnessed the agency agreement. It is therefore not a matter in dispute.
21. On the second issue as to whether the Respondent is in breach of the terms of the agreement, the Claimant contends that pursuant to the agreement he paid the sum of Kenya shillings two hundred thousand and thereafter he signed the agreement. This fact was confirmed by the Advocate who drew and witnessed the transaction.
22. The agreement clearly stated that the Claimant should pay the sum of Kenya shillings two hundred thousand. The Claimant has provided evidence that he paid the sum of Kenya shillings two hundred thousand through the Mpesa statement. CW 2 also confirmed that one can only sign the agency agreement after paying the sum of Kenya shillings two hundred thousand.
23. The Respondent's responsibilities are clearly set out in paragraph 1 of the agency agreement.
24. The Claimant states that after he did his part of the agreement, the Respondent called him and notified him that he will not be able to comply with the terms of the agreement. He offered him to go to Slovakia but upon payment of a further sum of Kshs.50, 000/=.
25. The Claimant states that he instead opted for a refund which the Respondent has failed to make.
26. The Respondent in his witness statement states that the Claimant was enrolled in the Slovakia/Czechia programme. He states that the Claimant refused to cooperate and cancelled the programme.
27. The agreement between the parties talks of the Norway programme. It does not talk about Slovakia/Czechia. There is no written agreement cancelling or amending the initial agency agreement. There is no letter to the Claimant indicating that he has failed to cooperate with the Respondent. There is no letter from the Claimant cancelling the programme.
28. Considering the evidence adduced and the documents on record, I find that the Respondent was in breach of the agency agreement.



29. As regards to what reliefs the Claimant is entitled, the Claimant has proved that he paid the sum of Kenya shillings two hundred thousand to the Respondent. I therefore find that the Claimant is entitled to a refund of the sum of Kenya shillings two hundred thousand.
30. On the issue of a declaration that the Respondent is in breach of the agreement dated 14th November 2023, I have already stated so.
31. On the issue of general damages, the Claimant did not demonstrate that he suffered any damage. I will therefore not award this prayer.
32. On the issue of costs, the Claimant having succeeded and having incurred expenses, I award costs of Kenya shillings Seventy thousand to the Claimant.
33. On the issue of interest, there will be interest at court rate on the sum of Kenya shillings Two hundred thousand from the date of filing of this claim and interest at the same rate on costs from the date of this award.
34. By dint of the law, this award has been adopted as a court judgement enforceable as a decree of this court.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 4TH DAY OF APRIL 2025.

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R. NYAKUNDI
JUDGE

