



REPUBLIC OF KENYA



**Jumuia Hospital Limited v Consultant & another (Arbitration Cause E010 of 2024)
[2025] KEHC 5968 (KLR) (Commercial and Tax) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5968 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
ARBITRATION CAUSE E010 OF 2024**

JWW MONG'ARE, J

MAY 12, 2025

BETWEEN

JUMUIA HOSPITAL LIMITED APPELLANT

AND

MIRADI CONSULTANT 1ST RESPONDENT

ANFIELD AUCTIONEERS 2ND RESPONDENT

RULING

1. What is before the Honourable Court is a Notice of Motion application filed under a Certificate of Urgency and brought under section 1A, 1B and 3A of the *Civil Procedure Act*, Order 10 Rule 1, Order 22 Rule 22, Order 51 Rule 1 of the Civil Procedure Rules, Article 50 of *the Constitution* and it seeks the following orders:-
 1. Spent
 2. Spent
 3. That upon grant of prayer 2 above, leave be granted to the Applicant to defend and be heard on the application for Notice to Show Cause filed by the 1st Respondent herein.
 4. That the Proclamation Notice dated 4th November 2024 be set aside and or stayed pending the hearing and determination of this application.
 5. That the Honourable court be pleased to make and or issue such other orders as it may deem fit to grant.
 6. That costs of this application be provided for.



2. The application is supported by the grounds set out on its face and the supporting affidavit of Tracy Chamia sworn on 19th November 2024. It is opposed and the Respondents have filed a replying affidavit sworn by Alred Aluvala on 27th November 2024. Both parties have filed written submissions which I have carefully considered.
3. A perusal of the court record reveals that the Respondent moved this court by a chamber summons application dated 16th February 2024 seeking to have the court recognize and adopt as a judgment of the court the arbitral award by the sole arbitrator Festus M. Litiku that was published on 12th February 2024.
4. The Court notes that on 3rd April 2024, this matter was set down for trial before it and when a Mr. Atema, Counsel holding brief for Mr. Majani appeared for the Applicant in the said Chamber summons and confirmed to the court that indeed the Respondent to the said application had been duly served but had failed to put in a response to the same. The Court upon perusal of the Affidavit of Service filed therein went ahead to allow the application which ostensibly recognized and adopted the Arbitral Award by Festus M. Litiku published on 12th February 2024.
5. I have considered the arguments put forward by the parties herein and note from the averments in the Replying affidavit the the Arbitral Award was arrived at by consent of the parties thereto and that part of the settlement agreed upon has already been settled.
6. I have also considered the affidavit by the Applicant in support of the present application and I note that no tangible explanation has been made to explain why, if indeed the applicant wished to oppose the recognition and adoption of the Arbitral Award, why they did not file a reply to the Chamber Summons application of 16th February 2024. I further note, despite moving this court to set aside the arbitral award, there is nothing made available to this court to consider, as to what form of opposition they intended to mount towards opposing the said application.
7. I am therefore satisfied that the applicant, having been duly served with chamber summons had opportunity to oppose it but chose not to do so at the time allocated by law. The Applicant also absented themselves when the matter came before the court on April 3, 2024 and is therefore guilty of laches. The Court finds that the present application is without merit and will proceed to dismiss the same with costs to the Respondent. The interim orders issued herein are vacated forthwith. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 12TH DAY OF MAY 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. MS. Kagendo holding brief for Mr. Gitonga for the Applicant.
2. N/A for the Respondent.
3. Amos - Court Assistant

