Wealthsmith Limited & another v Gichohi & another (Miscellaneous Application E034 of 2022) [2025] KEHC 6747 (KLR) (Commercial and Tax) (23 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6747 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

MISCELLANEOUS APPLICATION E034 OF 2022

RC RUTTO, J

MAY 23, 2025

BETWEEN

WEALTHSMITH LIMITED ..... 1ST APPLICANT

BARLETTA HOLDINGS LIMITED ..... 2ND APPLICANT

AND

JANE WANGECHI GICHOHI ..... 1ST RESPONDENT

JUSTUS MUNYITHYA ..... 2ND RESPONDENT

RULING

1. Before this court for determination is an application dated 22nd April 2022 seeking: -

    a. That this Honourable court be pleased to order that the annexed impugned arbitral award issued by the sole arbitrator, Mr. Munyithya dated 10th April 2022 be deemed as filed in this Honourable court.

    b. That this Honourable court do thereafter issue an order to set aside the entire arbitral award as being unjustifiable, manifestly excessive beyond the dispute referred to the arbitrator, exorbitant, punitive and issued under undue influence and duress, and contrary to the *Arbitration Act*, Rules and general law on award and the attendant principles thereto.That this Honourable court do issue an order to set aside the arbitral award as being against Arbitration agreement of the parties, public policy having been issued in breach of relevant applicable law for the award and the attendant dispute referred to the arbitrator.

    c. That the 1st and 2nd Respondents be ordered to pay the costs of the Application.

2. The basis of the application filed by the Applicants is that,:-

a. Pursuant to an agreement entered into by the parties on 15th March 2017 for the construction and management of two greenhouses for the 1st Respondent, the agreed annual remittance to the 1st Respondent was Kshs.400,000/=, payable in two equal instalments. The first instalment was due six months after the completion of the greenhouses. The Applicants complied with the terms of the agreement and paid the 1St Respondent the first instalments of Kshs.200,000/= for each of the properties on 20th October 2017 and 10th November 2017, respectively. The Respondent was duly notified that the second annual payments were scheduled for 31st March 2018.

b. That on 25th March 2018, the Applicants became aware of a Facebook group named "Wealthsmith Investment Scam Victims Group," in which the 1st Respondent was the administrator. In the group, the 1st Respondent alleged that the Applicants' companies were defrauding individuals by encouraging them to invest in non-existent greenhouses and by failing to remit the agreed annual payments. By a letter dated 27th March 2018, the Applicants rescinded the Tripartite Agreement, citing the online campaign as having disrupted the smooth running of the farming operations. Subsequently, on 2nd July 2018, the 1st Respondent wrote to the 1st Applicant, alleging breach of contract and proposed arbitration as a means of resolving the dispute. He sought payment of Kshs.800,000/= as return on investment.

c. That on 5th March 2019, the 1st Respondent filed her Statement of Claim in which she sought payment of Kshs.1,600,000/=. This amount was inconsistent with the claim she had initially submitted to the Chartered Institute of Arbitrators for the appointment of an arbitrator. The Applicants filed their defence and contended that the issues raised in the Statement of Claim differed from those initially referred to arbitration.

d. That on 21st September 2020, the Arbitrator notified the parties that the arbitral award was ready for collection, subject to the payment of the arbitrator's fees. That on or around March 2021, the Applicants became aware of communication between the Respondents of which they had not previously been informed. Upon inquiry, the Arbitrator confirmed that the 1st Respondent had visited the Chartered Institute of Arbitrators and sought favorable terms regarding the arbitrator's ruling. The Applicants raised concern with the Arbitrator, noting that such communication could unduly influence the outcome of the award.

e. That the final arbitral award issued on 25th March 2022 awarded the 1st Respondent a sum of Kshs.2,152,000/= as return on investment. This amount differed from the claims previously made by the 1st Respondent. Furthermore, the final award published on 25th March 2022 was not consistent with the award that had been communicated to the parties on 16th September 2020.

f. That the award dealt with a dispute not failing within the terms of reference to arbitration and that the arbitral award contained decisions on matters beyond the scope of the reference to arbitration. Finally, that the making of the award was affected by undue influence.

3. In her response sworn on 7th June 2022, the 1st Respondent stated that the Applicants failed to honour their subsequent obligations to remit her return on investment despite numerous demands. She further alleged that the Applicants failed to disclose the location of her plots and greenhouses, despite repeated requests, in breach of the Tripartite Agreement. The 1st Respondent maintained that her statements in various forums were truthful and based on factual accounts of the events. She asserted that the amount due and owing increased over time, as the payments were to be made every six months and were therefore not fixed. She further stated that the total amount of Kshs.2,200,000/= comprised

Kshs.1,600,000/= being the unremitted return on investment, and Kshs.600,000/= being monies paid for the non-existent greenhouses.

4. The 2nd Respondent/Arbitrator, in his response sworn on 12th September 2022, opposed the Applicants' application and stated that the issue of jurisdiction particularly that the 1st Respondent raising matters outside the arbitration clause had already been determined. He noted that the Applicants did not challenge that ruling or seek leave to appeal. The Arbitrator further stated that he did not communicate directly with any party as alleged and that the award was based solely on the evidence and pleadings presented by the parties. He affirmed that the award was issued within the scope of the arbitration clause agreed upon during the contract negotiations. The 2nd Respondent also contended that he is not a necessary party to these proceedings, as no specific orders have been sought or issued against him.

5. The Applicants filed a Further Affidavit sworn on 10th November 2022 in response to the 1st Respondent's assertions. They stated that the Tripartite Agreement was terminated thirty days after the issuance of the notice to terminate, and consequently, farming activities on the 1st Respondent's properties ceased. As such, the Applicants contended that the arbitral award improperly included compensation for a period during which no farming was taking place. Additionally, the Applicants pointed out that, based on the 1st Respondent's own response, she admitted to having engaged in separate communication with the Arbitrator.

6. The Applicants filed a Further Affidavit sworn on 10th November 2022 in response to the 2nd Respondent's assertions. They reiterated that there had been multiple communications both verbal and written between the 1st Respondent, the Chartered Institute of Arbitrators, and the Arbitrator. In support of this, the Applicants attached copies of a few communications they were able to access.

7. They further stated that the Arbitrator was aware of a complaint made by the 1st Respondent, which prompted him to convene a meeting on 14th February 2022. During this meeting, the Arbitrator informed the parties that he had received a written complaint from the 1st Respondent and confirmed that she had physically visited the offices of the Chartered Institute of Arbitrators to raise concerns about the arbitration process. The Applicants contended that such communication blindsided them, as the Arbitrator did not disclose any of his correspondence with the Institute regarding the 1st Respondent's complaints. Whether or not these communications influenced the Arbitrator's final decision remains a question of perception and fairness.

8. Additionally, the Applicants argued that the Arbitrator improperly considered issues related to the sale of land, despite there being no arbitration agreement covering such disputes. They submitted that paragraphs 205 and 210 of the award were not grounded in the parties' pleadings or submissions but were instead based on the Arbitrator's own interpretation of the parties' obligations.

9. The Applicants also raised concerns regarding the timeline and validity of the award. They noted that, on 21st September 2020, the Arbitrator informed the parties that the award was ready for collection. However, on 23rd March 2022, he again invited the parties to collect the award, which was ultimately dated 25th March 2022. Lastly, they argued that the Arbitrator dealt with matters that had not been referred to him under the letter of appointment.

10. The Application was canvassed by way of written submissions. The Applicants filed their submissions dated 17th November 2022 and further submissions dated 13th March 2023. The 1st Respondent filed her submissions dated 25th January 2023 and the 2nd Respondent filed his submissions dated 1st March 2023.

Applicant's Submissions

11. The Applicant gave the background information from the signing of the Tripartite Agreement to the publishing of the award on 25th March 2025 and corrected on 10th April 2022. The Applicant submitted on two issues that is, whether the arbitrator dealt with matters beyond the terms and scope of the reference to arbitration and whether the making of the award was induced or affected by fraud, bribery, undue influence or corruption. The Applicants submitted that the application for review is in terms of Section 35 (2) (iv) and (vi) of the *Arbitration Act*.

12. On the first issue, the Applicants submitted that in the case of Synergy Credit Limited versus Cape Holdings Limited [2020] eKLR, the Court of Appeal stated that, in determining whether an arbitral tribunal has dealt with a dispute not contemplated or falling within the terms of reference, or whether its award addresses matters beyond the scope of the reference to arbitration, the arbitration agreement or clause is critical. Other relevant considerations, while not exhaustive, include the subject matter, pleadings, submissions by the parties, and their conduct during the arbitration. The Applicants submitted that there was no claim for the instalment payments considered by the Arbitrator in Paragraph 211, as this issue was neither pleaded nor submitted by any party. Additionally, they contended that there was no claim for any payments related to returns for the years 2019 or 2020, even in the Statement of Claim. The Applicants concluded that the Arbitrator exceeded his mandate by determining issues not referred to him in the arbitration.

13. The Applicants submitted that, in Paragraph 11 of the Statement of Claim, the 1st Respondent had already stated that there were no greenhouses on her land and demanded a refund for the purchase price of two non-existent greenhouses, each priced at Kshs.300,000/=. They further submitted that the payment of returns was governed by Clause 3:10 of the Tripartite Farm Management Agreement, which obligated the 2nd Applicant to pay the owner Kshs.400,000 in two instalments for every twelve months of successful farming, marketing, and selling of the produce. Therefore, any payment to the 1st Respondent was contingent upon successful farming, marketing, and selling of the produce.

14. In reference to the case of G. Percy Trentham versus Archital Luxfer Limited [1993] 1 Lloyds Rep 25, where the court held that law generally adopts an objective theory of contract formation, the Applicants argued that the Arbitrator inferred the parties' intentions beyond the express terms of the contract. They contended that the Arbitrator was required to rely solely on the explicit terms of the contract, which clearly stipulated that payments would be made only upon successful farming, marketing, and selling of the produce.

15. The Applicants further submitted that the determination of whether there was successful farming, marketing, and selling of the produce was a question of fact that could not be assumed by either party. They emphasized that no evidence was presented to prove that successful farming had occurred.

16. The Applicants referred to the cases of Raindrops Limited versus County Government of Kilifi [2021] eKLR and RTS Flexible Systems Limited versus Molkerei Alois Muller GmbH & Co KG (UK Production) [2010], to submit that none of the parties requested the Arbitrator to award any equitable reliefs. They argued that the Arbitrator could only determine the dispute based on the prayers presented before him and could not go beyond those specific requests. With reference to the case of Margaret Njeri Muiruri versus Bank of Baroda (Kenya) Limited [2014] eKLR, where the Court of Appeal held that it is not the court's role to rewrite a contract for the parties, the Applicants submitted that the 1st Applicant invoked Clause 7.4.1 of the Tripartite Agreement to terminate the Agreement. As a result, the Applicants submitted that the farming activities on the 1st Respondent's land ceased, and without farming, no returns would be due to the 1st Respondent.

17. The Applicants, in their submissions, clarified that the present application is not an appeal against the Arbitrator's decision but an application for the review of the Arbitrator's decision. They argued that the Agreement in question had already been terminated and was never reinstated; however, that the Arbitrator, in his award at Paragraph *20*, reinstated the Agreement.

18. On the second issue, regarding whether the making of the award was induced or affected by fraud, bribery, undue influence, or corruption, the Applicants submitted that the 1st Respondent was in communication with the appointing body outside the arbitration proceedings. They contended that this communication was intentionally designed to influence the outcome of the arbitration, leading the Arbitrator to take a biased stance and issue a skewed award.

19. In response to the Respondent's submissions the Applicants further submitted that this Court has been invited to determine whether the award issued by the Arbitrator was confined to the demands and disputes referred to him for arbitration. They argued that the award addressed a dispute that was not contemplated or included within the terms of reference for the arbitration. The Applicants pointed out that none of the parties submitted any claims related to returns for any period beyond April 2019, yet the Arbitrator unilaterally introduced a claim and issued an award for the period from 15th May 2019 to May 2020.

20. They further argued that the Arbitrator failed to address the point that the award exceeded the dispute referred to him, as well as the claim filed before him. The Applicants contended that the Arbitrator had no authority to venture beyond the scope of the reference, and any award exceeding the original reference amount of Kshs.800,000 should be set aside immediately.

21. The Applicants further submitted that the claim regarding the arbitral award being held back in lien of the Arbitrator's fees is unfounded, as there is no provision allowing the Arbitrator to withhold the award from September 2020 to March 2022 while maintaining its credibility. Citing the case of Kenya Medical Women's Association v. Registered Trustees Gertrude's Gardens; Paul Ngotho, Arbitrator (Interested Party) [2021] eKLR, the Applicants submitted that the Arbitrator should have concluded the arbitration within the shortest possible time, as arbitration is intended to be a faster and more efficient method of settling disputes. They further submitted that any claims for fees could have been pursued through the appropriate legal channels.

22. In conclusion, the Applicants submitted that the court should review the pleadings and submissions and determine that the award exceeded the scope of the reference to arbitration, the pleadings and submissions made before the Arbitrator by the parties, and was influenced by undue pressure and proceeds to set aside the entire award as published, with costs to the Applicants.

1st Respondent's submissions

23. The 1st Respondent's submissions addressed one issue for determination that is, whether or not the court ought to set aside the arbitral award published on 25th March 2022 and corrected on 10th April 2022.

24. The 1st Respondent referred to the court's power to set aside an arbitral award under Section 35(2) of the *Arbitration Act* and further submitted that this power is limited. They argued that the Applicants have failed to provide sufficient evidence to justify the setting aside of the arbitral award. In support, the 1st Respondent cited the case of Nyutu Agrovet Limited versus Airtel Networks Kenya Limited [2015] eKLR, the case of Mahican Investments Limited & 3 others versus Giovanni Gaida & Others [2005] eKLR, and Section 32A of the *Arbitration Act*. The 1st Respondent contended that the Arbitrator's

award is final, and that courts should be reluctant and cautious when called upon to interfere with the outcome of arbitration proceedings.

25. On the issue of whether the arbitrator dealt with matters beyond the scope of the reference to arbitration, the 1st Respondent submitted that the Applicants are essentially asking the court to revisit matters that were already addressed by the sole arbitrator in the ruling dated 20th August 2019. The 1st Respondent argued that such a request for the court to act as an appellate body goes against the fundamental principles underpinning the *Arbitration Act*. In support of this argument, the 1st Respondent cited the case of Synergy Credit Limited versus Cape Holdings Limited NRB CA Civil Appeal No. 71 of 2016 [2020] eKLR and the case of Kenya Oil Company Limited versus Kenya Pipeline Company Limited [2014] eKLR.

26. The 1st Respondent concluded her submissions by asserting that the burden of proving the existence of fraud, bribery, undue influence, or corruption rests with the Applicants, who have failed to substantiate such claims. Furthermore, the communication between the 1st Respondent, the 2nd Respondent, and the Chartered Institute of Arbitrators was formal, transparent, and disclosed to all parties. The 1st Respondent prayed that the application be dismissed with costs.

2nd Respondent's/Arbitrator's Submissions

27. The 2nd Respondent submitted that pursuant to Section 16B of the *Arbitration Act*, an arbitrator is not liable for actions taken in good faith in the performance of his duties. He further submitted that the Applicants have made baseless accusations against him without providing sufficient evidence to support these allegations. The 2nd Respondent asserted that the Applicants have failed to meet the burden of proof required to demonstrate any misconduct on his part and have not sought specific orders against him as the arbitrator. While relying on the case of Cape Holdings Limited versus Synergy Industrial Credit Limited HC COMM Misc. 114 of 2015, the 2nd Respondent submitted that he is not a pertinent party to the proceedings, as he was acting in his capacity as an arbitrator in good faith and in accordance with the appropriate arbitration procedures. He emphasized that his involvement in the matter is unnecessary, as no specific orders have been sought against him. This argument was supported by the cases of Synergy Industrial Credit Limited v Cape Holdings Limited SCK Petition No. 2 of 2017 [2019] eKLR and Nyutu Agrovet Limited versus Airtel Networks Kenya Limited; Chartered Institute of Arbitrators - Kenya Branch (Interested Party) SCK Petition No. 12 of 2016 [2019] eKLR.

28. The 2nd Respondent further submitted that the dispute addressed in the arbitration was clearly within the scope of the arbitration clause in the agreement signed by the parties. He submitted that the Applicants' claim was an afterthought, noting that the issue of jurisdiction had already been addressed by the Tribunal in a ruling that was not challenged by the Applicants. Consequently, that the Applicants are now barred from raising the same issue. While citing the case of Universal Petroleum Company Limited (In Liquidation) versus Handels-und Transportgesellschaft mbH (1987) 2 All ER 737, the 2nd Respondent asserted that the award was within the scope of the arbitration clause and the agreement. He emphasized that the Applicants' challenge lacked merit, as they failed to present evidence that challenged the award on valid legal grounds as required by the *Arbitration Act*.

29. The 2nd Respondent concluded by urging the court to dismiss the Application with costs being awarded to the Respondents.

Analysis and Determination

30. Based on the foregoing the issue arising for determination is whether the arbitral award in question has met the required threshold under section 35(2) of the *Arbitration Act*. Section 35 of the Act sets out the grounds for setting aside of an award as follows: -

(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

(v) 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.

(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.

31. Having highlighted the grounds of setting aside, I shall proceed to examine whether the present application has met the said grounds. The threshold for setting aside an arbitral award was stated in the case of Synergy Industrial Credit Limited v Cape Holdings Limited SC Petition No. 2 of 2017 [2019] eKLR in which the Supreme Court stated that;

> " Generally, therefore, once parties agree to settle their disputes through arbitration, the arbitral tribunal should be the core determinant of their dispute. Once an award is issued, an aggrieved party can only approach the High Court for setting aside

the award, only on the specified grounds. And hence, the purpose of Section 35 is to ensure that courts are able to correct specific errors of law, which if left alone would lead to a miscarriage of justice. Therefore, even in promoting the core tenet of arbitration which is a quicker and efficient way of settling commercial disputes, that should not be at the expense of real and substantive justice....."

32. In that regard, which specific errors of law should this court correct, which if left alone would lead to a miscarriage of justice? This application is premised on two major grounds; that the arbitral award dealt with an issue not contemplated by or not falling within the terms of the reference of arbitration; the arbitral award was induced or affected by fraud, bribery, undue influence or corruption;

Whether the award dealt with issues not contemplated within the terms of reference to arbitration

33. Pursuant to a Tripartite Farm Agreement dated 15th March 2017 between the parties herein, the Applicants were to manage the greenhouses erected on the 1st Respondent's two parcels of land known as Nanyuki/Marura Block 5/245, Foothills Kilimo Poa, Plot Numbers 570 and 571 (hereinafter referred to as "the two plots"). The obligations of each party were clearly defined in the agreement.

34. Parties agreed to submit any dispute to be resolved through arbitration. Clause 10 of the Agreement provided that,

> " Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof shall be referred to arbitration under the Rules of the Chartered Institute of Arbitrators of the United Kingdom, Kenya Branch....."

35. A dispute arose and vide the letter dated 5th December 2018, the 1st Respondent through her counsel on record requested for an appointment of an arbitrator and in the said letter demanded the following from the Respondents;

> " 1. The payment of her return on investment due and owing since September 2017 to date totaling to Kshs 800, 000/=
>
> 2. Unconditional termination of the contract.
>
> 3. The full costs associated with any arbitration proceedings including all professional and legal fees and disbursements as well as fees and disbursements of the arbitral tribunal."

36. Upon appointment of the Arbitrator, the 1st Respondent filed her statement of claim dated 5th March 2019 seeking;

> "
>
> " 1. The payment of Kenya Shillings One Million Six Hundred Thousand Only (Kshs.1,600,000/=) being the payment of her return of investment and the refund of the purchase price of the two (2) non-existent greenhouses each at Kshs.300,000/= totaling to a cumulative sum of Kshs.2,200,000/=
>
> 2. The payment of interest of (1) above at court rates from the due dates to the payments in full;
>
> 3. The termination of the Tripartite Farm Management Agreement forthwith.

4. Any other or further relief that the arbitrator may deem fit to grant Costs of these proceedings."

37. The Appellant seeks to set aside the arbitral award on ground that the orders sought by the 1st Respondent in her request for the appointment of an arbitrator were different from those sought in the claim dated 5th March 2019. I note that the arbitrator addressed this issue in his ruling dated 20th August 2019, following the Applicants' opposition filed during the arbitration, as set out in the Grounds of Opposition dated 13th March 2019. The ruling was never appealed, and the arbitration proceedings continued thereafter. In that regard, this ground cannot be sustained.

38. The Applicants have also invoked the court's jurisdiction to set aside the award because the arbitrator allegedly in determining the issues therein, chose to decide it on his own reading of the Agreement and ignored the reference to arbitration. Specifically, the Applicants have made reference to the interpretation at Paragraph 210 of the award. In the said paragraph, the arbitrator stated;

> "210. Guided by the wording of the Tripartite Fram Management Agreements in its entirety, the Tribunal finds that to compute the Claimant's return on investment and when they became due, the formula to be used is looking at:
>
> a. The dates when the payments were to fall due under the Agreements;
>
> b. The term of the Agreements;
>
> c. The various periods for which instalments were to be made.
>
> d. The amount to be paid and
>
> e. The unpaid periods."

39. Following the above, the Applicants claim is that the arbitrator went ahead and made a ruling on issues that had not been referred to arbitration for which no claim had been made by the 1st Respondent and no submissions had been made by either of the parties particularly for the award or returns for any period beyond April 2019.

40. It is important to take note at this stage that the Respondents herein did not submit on the second reason namely the allegation that the arbitrator went beyond the scope of reference.

41. In considering whether or not an arbitral award deals with matters not contemplated or falling within the terms of the reference to arbitration, the Court of Appeal in Synergy Credit Limited v Cape Holdings Limited NRB CA Civil Appeal No. 71 of 2016 [2020] eKLR observed as follows:

> "In determining whether the arbitral tribunal has dealt with a dispute not contemplated or falling within the terms of the reference, or whether its award contains decisions on matters beyond the scope of the reference to arbitration, the arbitral clause or agreement is critical. Other relevant considerations, with-out in any way prescribing a closed catalogue, would include the subject matter, pleadings and submissions by the parties, as well as their conduct in the arbitration. Pleadings, however, must be considered with circumspection because, as the US Court of Appeals for the Ninth Circuit observed in Ministry of Defence of the Islamic Republic of Iran v. Gould, Inc. (supra), the real issue in such an inquiry is whether the award has exceeded the scope of the arbitration agreement, not whether it has exceeded the parties' pleadings."

42. In this case, the arbitration agreement at Clause 10 states as follows;

> " Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof shall be referred to arbitration under the Rules of the Chartered Institute of Arbitrators of the United Kingdom, Kenya Branch....."

43. As is apparent from the arbitration clause, it is evident that the parties contemplated that the arbitrator appointed would have jurisdiction to hear the broadest scope of disputes arising under the Agreement. From my understanding, the dispute between the Applicants and the 1st Respondent pertains to an alleged breach of the Tripartite Agreement, and I find nothing in the Award to suggest that the arbitrator exceeded this scope of the reference. The Award demonstrates that the arbitrator considered the parties' statement of agreed issues dated 11th October 2018, one of which was whether the Claimant was entitled to a return on investment from the date of default to date. He proceeded to determine the nature of the relationship, whether the Applicants were in breach, and whether the 1st Respondent was entitled to the reliefs sought. The arbitrator analyzed the evidence and submissions in full and issued the Award accordingly.

44. It is now well settled that Section 35 of the *Arbitration Act* does not confer appellate jurisdiction upon this Court over arbitral awards. This position was explained by the Court of Appeal in Kenya Oil Company Limited & Another v Kenya Pipeline Company Limited NRB CA Civil Appeal No. 102 of 2012 [2014] eKLR where it cited with approval the following dicta by Steyn LJ., in Geogas S.A v Trammo Gas Ltd (The "Baleares") 1 Lloyds LR 215:

> " The arbitrators are the masters of the facts. On an appeal the court must decide any question of law arising from an award on the basis of a full and unqualified acceptance of the findings of fact of the arbitrators. It is irrelevant whether the Court considers those findings of fact to be right or wrong. It also does not matter how obvious a mistake by the arbitrators on issues of fact might be, or what the scale of the financial consequences of the mistake of fact might be. That is, of course, an unsurprising position. After all, the very reason why parties conclude an arbitration agreement is because they do not wish to litigate in the courts. Parties who submit their disputes to arbitration bind themselves by agreement to honour the arbitrators' award on the facts. The principle of party autonomy decrees that a court ought never to question the arbitrators' findings of fact."

Whether the arbitral award was induced or affected by fraud, bribery, undue influence or corruption

45. Turning to this second issue, I make reference to the case of National Cereals & Produce Board v Erad Suppliers & General Contracts Limited [2014] eKLR, where the Court of Appeal stated:

> " In order to arrive at a decision whether an arbitral award was induced or affected by fraud, bribery, undue influence or corruption, the High Court must, in our view, be guided by evidence. For that purpose, it is open for parties to present evidence before the High Court and for the High Court to take and consider such evidence."

46. The Applicant's claim is that sometime in March 2021, they became aware of communication between the 1st Respondent, the 2nd Respondent, and the Chartered Institute of Arbitrators, Kenya Branch, which they allege excluded them. They further claimed that similar communications occurred in December 2021 and on 10th March 2021.

47. The Applicants also produced a letter dated 24th March 2022 from the 1st Respondent, in which she withdrew her complaints against the 2nd Respondent/Arbitrator. In her response to the Application, the 1st Respondent admitted to contacting the 2nd Respondent and the Chartered Institute of Arbitrators (Kenya) in a bid to seek expeditious disposal of the claim, and she attached an email dated 3rd July 2020 in support of this assertion.

48. Based on the evidence on record as filed by the Applicants and the 1st Respondent, there is nothing to indicate that the 2nd Respondent was unduly influenced in delivering the arbitral award in favour of the 1st Respondent. While the Applicants may have perceived the Arbitrator to be partial, perception and inference alone are insufficient and cannot stand. They have not furnished any credible evidence or proof that the award was induced or affected by fraud, bribery, undue influence, or corruption.

49. In the end, I find that the application dated 22nd April 2022 is not merited, the same is hereby dismissed with costs to the Respondent.

50. Orders Accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 23RD DAY OF MAY, 2025.

RHODA RUTTO

JUDGE

In the presence of;

.....for Applicants

.....for Respondent

Sam Court Assistant