



Laiser Place Apartments Management Company Ltd v Chelangat (Miscellaneous Application E081 of 2024) [2025] KEHC 8776 (KLR) (Commercial and Tax) (20 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8776 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E081 OF 2024**

FG MUGAMBI, J

JUNE 20, 2025

BETWEEN

**LAISER PLACE APARTMENTS MANAGEMENT COMPANY
LTD APPLICANT**

AND

ANNE CHELANGAT RESPONDENT

RULING

1. This ruling determines the application dated 18th November 2024 brought under Article 159(2)(c) of the *Constitution* of Kenya 2010, Section 36 of the *Arbitration Act* 1995, Rule 9 of the Arbitration rules 1997 and Section 1A, 1B and 3A of the *Civil Procedure Act*.
2. The application seeks the recognition and enforcement of the arbitral award delivered by Advocate Job Weloba, MCI Arb dated 25th September 2024. It is anchored on the grounds set out on its face and is supported by the affidavit sworn by Emily Karuga.
3. The applicant contends that it entered into Lease Agreements with the respondent for the management of nine apartments, during which it rendered services and invoiced the respondent for unpaid service and water charges. Following the respondent's failure to pay, the matter was referred to arbitration, and Advocate Job Weloba was appointed as arbitrator. On 25th September 2024, the arbitrator awarded the applicant Kshs. 1,224,358/= in service charges, interest, and Kshs. 95,000/= in arbitration costs.
4. The respondent has neither complied with the award nor challenged it. The applicant now seeks recognition and enforcement of the award as a decree of this Court.
5. The application is opposed through a replying affidavit sworn on 27th January 2025 by Ann Chelangat, who states that she had earlier challenged the enforcement of the award in an application dated 28th



November 2024. She contends that the claimant is a stranger to the arbitral proceedings and that its legal capacity to sue was never established, despite repeated requests for clarification. She further avers that the arbitrator failed to determine this preliminary issue and proceeded ex parte, resulting in an award that she terms as unfair and unjust.

6. It is her position that the arbitration process violated principles of fairness by recognizing the interests of an entity not known in law. She urges the Court to dismiss the application for enforcement pending resolution of the claimant's legal standing.
7. In rebuttal, the applicant maintains its position that it had the legal capacity to initiate the arbitration. The applicant further asserts that both parties were accorded an opportunity to participate in the arbitral proceedings and confirms that the respondent was present at the preliminary meeting.
8. The applicant states that during the arbitral proceedings, directions were issued for the filing of pleadings. While the applicant complied, the respondent failed to file a statement of defence or raise any preliminary objection. Despite multiple opportunities and reminders, the respondent's advocates declined to participate further. The arbitrator consequently proceeded in accordance with the *Arbitration Act* and issued a final award in favour of the applicant.
9. The applicant maintains that the respondent's claim regarding its legal status is unfounded, as all relevant documentation was furnished and remained unchallenged during the arbitration. It is further contended that no valid application to set aside the award has been filed, and that the respondent's reference to the application dated 28th October 2024 is unsubstantiated and constitutes an abuse of the court process intended to delay enforcement.

Analysis and Determination

10. I have considered the application, the response and the submissions on record. The primary issue for determination is whether the applicant has satisfied the legal threshold for the recognition and enforcement of the arbitral award.
11. Section 36 of the *Arbitration Act*, 1995 empowers the High Court to recognize and enforce domestic arbitral awards, and provides as follows:
 - “(1) An arbitral award, irrespective of the state in which it was made 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) Unless the High Court otherwise orders, the party replying on an arbitral award or applying for its enforcement shall furnish—
 - (a) the duly authenticated original arbitral award or a duly certified copy of it; and
 - (b) the original arbitration agreement or a duly certified copy of it.
 - (3) If the arbitral award or arbitration agreement is not made in the English language, the party shall furnish a duly certified 'translation of it into the English language.’”
12. One of the grounds raised by the respondent in opposition to the application is that an application to challenge the arbitral award, dated 28th October 2024, has allegedly been filed. A copy of the said application has been annexed to the respondent's affidavit. However, upon perusal of the respondent's



- documents, there is no evidence that the application has been formally filed in court. No case number has been provided, nor has any court-stamped copy of the application or relevant court order been exhibited.
13. If such an application had indeed been filed, nothing would have been easier for the respondent than to furnish the Court with a corresponding case number. The absence of such a number confirms that no formal application exists before the court. In the circumstances, the Court is unable to verify the existence or pendency of any valid challenge to the arbitral award.
 14. The respondent further opposed the application on the ground that the applicant's legal capacity had not been established and that the arbitral proceedings were not conducted in a proper, just, and fair manner. The question of legal capacity is a jurisdictional issue that touches on the competence of the arbitral tribunal to entertain the dispute and render an award. If the respondent genuinely intended to challenge the applicant's capacity and the fairness of the process, such objection ought to have been raised as a preliminary issue before the arbitral tribunal.
 15. Even if there was any truth as alleged, that the issue was raised during arbitration, the respondent retained the right to move this Court promptly for appropriate relief rather than raising it at this enforcement stage. This procedure is clearly provided for under Section 17 of the *Arbitration Act*, which states in part under Section 17(6):

“Where the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party aggrieved by such ruling may apply to the High Court within thirty days after having received notice of that ruling to decide the matter.”
 16. The record demonstrates that the arbitral tribunal afforded the respondent multiple opportunities to participate in the proceedings, including her attendance at the preliminary meeting and issuance of directions for the filing of pleadings. Despite attending the preliminary session and receiving all relevant communications, the respondent failed to file a statement of defence or raise any preliminary objections as required under the *Arbitration Act*.
 17. In the circumstances, the arbitrator proceeded in accordance with the law. There is nothing on record to suggest that the respondent was denied a fair hearing or that the principles of natural justice were in any way violated.
 18. Having not demonstrated compliance with the requirements of Section 17 of the Act, the objection on jurisdiction at this stage appears to be an afterthought and does not constitute a valid ground to resist the enforcement of the arbitral award.
 19. In any case, the applicant has furnished evidence of its incorporation, including a Certificate of Incorporation and CR-12 documents, in addition to the duly executed sub-lease agreements identifying it as the estate management entity. On the basis of this documentation, it is clear that the applicant is a duly registered legal entity with capacity to sue and be sued.
 20. Section 37 of the *Arbitration Act* sets out the grounds upon which this Court may refuse to recognize or enforce an arbitral award. I have considered the objections raised by the respondent alongside the parties' submissions and find that the grounds advanced are insufficient to warrant refusal of recognition and enforcement of the award.
 21. The applicant has, on the other hand, complied with the procedural requirements for recognition and enforcement of an arbitral award under Section 36(2) of the *Arbitration Act* by annexing a copy of the arbitral award as well as the relevant lease agreements.



Disposition

22. Accordingly, I find merit in the application dated 18th November 2024 and allow it on the following terms:

- i. The Final Arbitral Award dated 25th September 2024 is hereby adopted as an order of this Court. Leave is granted to the applicant to execute it accordingly.
- ii. The respondent shall bear the costs of this application.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 20TH DAY OF JUNE 2025.

F. MUGAMBI

JUDGE

