Linksoft Intergrated Services (E. A) Limited v Vesl Technologies Limited (Miscellaneous Application E107 of 2023 & E068 of 2022 (Consolidated)) [2025] KEHC 10409 (KLR) (Commercial and Tax) (3 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10409 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

MISCELLANEOUS APPLICATION E107 OF 2023 & E068 OF 2022 (CONSOLIDATED)

NW SIFUNA, J

JULY 3, 2025

BETWEEN

LINKSOFT INTERGRATED SERVICES (E. A) LIMITED ..... APPLICANT

AND

VESL TECHNOLOGIES LIMITED ..... RESPONDENT

RULING

1. Before the court are two Applications to be canvassed together. The 1st Application is a Notice of Motion dated 13th February 2023 seeking to set aside the Arbitral Award.

2. The Application was supported by the Affidavit of Anthony Wahome who stated that on 16th November 2022, the Sole Arbitrator, Dr. Kariuki Muigua MCIArb notified parties that it was in receipt of the balance of fees of Kshs. 1,500,000/- and advised parties to collect the award.

3. The Arbitral award has failed to address and appreciate the genesis of the Respondent's claim and the Applicant's parent contract, and the Huduma Kenya Secretariat Arbitral proceedings.

4. Further, the Arbitrator took a plunge on his fees from Kshs. 4,688,444/- to Kshs. 1, 500, 000 more than 3 years later and the Applicant is constrained to understand whether the making of the award was induced by undue influence to gain leverage of fees at a later date.

5. He added that the Arbitrator has failed to explain why it significantly reduced the fees 3 years later from Kshs. 4,688,444/- and no show of proof as to whether it received the negotiated fees of Kshs. 1,500,000/- that has led to the withholding of the award.

6. The Respondent responded to this Application vide the Replying Affidavit sworn on 6th March 2023 and averred that on 1st April 2020, the Arbitrator published the award, and informed the parties that the

Award was ready for collection upon payment of the Arbitrator's fee, and either party was free to pay the outstanding amount and demand a refund from the other. Therefore, the Court lacks jurisdiction to entertain the present Application as it is time barred, having been filed outside the 3 months period.

7. The 2nd Application is a Chamber Summons by the Respondent dated 14th December 2022, asking the court to recognize and adopt the Award dated 1st April 2020 published by Dr. Kariuki Muigua as a Judgment of the Court.

8. This Application was supported by the Affidavit of Vijaye Beehary, who stated that the parties herein entered into an Agreement dated 4th May 2015 under which the Applicant agreed to provide consultancy services to the Respondent for an agreed contract sum of USD. 3,240,21 1 for 18 months.

9. Subsequently, a conflict arose between the parties when the Respondent refused to pay the Applicant USD. 954,804.67 due and owed to the Applicant for services rendered. After all attempts to settle the matter amicably failed, the matter was referred to arbitration in line with Clause 7.2 of the Agreement.

10. Upon hearing both parties, the Tribunal published its award on 1st April 2020 and awarded the Applicant the amount of USD. 954,804.67 being the amount outstanding and due to the Applicant under the Agreement. The Applicant now seeks to have the Court recognize the Arbitral Award to enable it enforce it as a Decree of the Court as against the Respondent.

11. In response, the Applicant filed a Replying Affidavit sworn on 3rd March 2023 stating that the Arbitrator notified the parties on 16th November 2022 that the award was ready for collection and that the date of notification is deemed to be the date of delivery and receipt of the award.

12. Further, that the award is erroneous since it failed to address the genesis of the Applicant's c; claim which is anchored on the parent contract between Respondent and Huduma Kenya Centre Secretariat for the establishment of Huduma Kenya Business Management Information Systems. Thus, it was beyond the scope of reference to arbitration.

13. The Parties herein filed written submissions, which the court has carefully considered alongside the Applications and the Responses therewith. The court frames the following issues for determination

    a. Whether the application for setting aside is time-barred.

    b. Whether the Award should be should be adopted or set aside.

Analysis and determination

14. The Respondent avers that it is time barred contrary to Section 35(3) of the *Arbitration Act* which provides as follows:

> 35 (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

15. It was the Applicant's position that Arbitrator notified the parties on 16th November 2022 that the award was ready for collection and that the date of notification is deemed to be the date of delivery and receipt of the award.

16. In contrast the Respondent argued that on 1st April 2020, the Arbitrator published the award, and informed the parties that the Award was ready for collection upon payment of the Arbitrator's fee, and either party was free to pay the outstanding amount and demand a refund from the other.

17. The court has perused the annexures and it is evident that on 1st April 2020, the Arbitrator informed the parties that the award was ready for collection upon payment of the Arbitrator's fees

18. Further, on 15th August 2020, the Arbitrator issued a reminder to the parties that the Award was ready for collection upon payment of the Arbitrator's fees, and in light of the COVID-19 pandemic, he was willing to issue a 20% rebate on the outstanding amount, provided the same was paid within 10 days of the date of the letter, and further informed the parties that either party was free to pay the outstanding amount and claim a refund from the other.

19. In addition to the above, on 16th September 2020, the Arbitrator issued another reminder to the parties to pay the outstanding amount of Kshs. 4,688,444, and reiterated that any party could pay the amount and demand a refund from the other. Subsequent letters were issued to the parties by the arbitrator on 5th February 2021, 19th April 2021, 26th April 2021, 28th April 2021, and 30th August 2021 on the same issue.

20. Eventually, on 14th November 2022, the Claimant (the Respondent herein) wrote to the Arbitrator asking for further rebate of the Arbitrator's fee, requesting him to accept Kshs. 1,500,000 as full and final settlement of his fees. The Arbitrator accepted this proposal and once the payment was made by the Respondent the Arbitrator released the Award.

21. It is trite that an application to set aside an award should be made three months after receipt of the award. When did the parties receive the award? Section 35(3) states that an application to set aside the award should be made not later than three months from the date of receipt of the award. The date of receipt is the date when time begins to run.as was held in University of Nairobi v. Multiscope Consultancy Engineers Limited [2020] eKLR, the court considered the import of section 35(3) with regard to when an award is deemed to have been received by a party; and after considering a number of decision, the court stated:

> "[T] statute does not require the arbitral tribunal to dispatch or send a signed copy to each party. For that reason, delivery happens when the arbitral tribunal either gives, yields possession, releases or makes available for collection a signed copy of the award to the parties. Actual receipt of the signed copy of the award by the party is not necessary. So that when the arbitral tribunal notifies parties that a signed copy of the award is ready for collection then, the date of notification is deemed to be the date of delivery and receipt of the award because it is on that date that the tribunal makes the signed copy available for collection by the parties.
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> Should it be any different because the arbitral tribunal has withheld the delivery of the award because of none payment of fees and expenses (Section 32B (3)?...With respect I am unable to agree. Once the arbitral tribunal notifies the parties that the award is ready for collection upon payment of fees and expenses, then delivery will have happened as it is upon the parties to pay the fees and expenses. This is because the only obligation of the arbitral tribunal is to avail a signed copy of the award, of course subject to payment of fees and expenses which is an obligation of the parties. The tribunal having discharged that obligation, then delivery and receipt of the signed copy of the award is deemed because any delay in actual collection can only be blamed on the parties. Default or inaction on the part of the parties does not delay or postpone delivery."

22. In light of the above, it is undisputed that the award was received on 1st April 2020 when the Arbitrator notified the parties that it was ready for collection. It is also evident that the Applicant was copied in all the correspondences between the parties and the Arbitrator and cannot therefore claim that they were

not notified. The present Application having been filed on 13th February 2023, it is without a doubt time barred and is hereby dismissed.

23. On the second Application for recognition and enforcement of the arbitral award, the Respondent has attached a certified copy of the award dated 1st April 2020 and a copy of the agreement between the parties herein and which was the basis for referring the matter to arbitration, thus satisfying the requirements under Section 36 of the *Arbitration Act*.

24. Accordingly, the court finds that the application for recognition and enforcement of the award, is hereby allowed with costs.

DATED AND DELIVERED AT NAIROBI ON THIS 3RD DAY OF JULY 2025.

PROF (DR) NIXON SIFIUNA

JUDGE