



Tridev Builders Company Limited v Westmount Investments Limited (Miscellaneous Application E347 of 2021) [2025] KEHC 12641 (KLR) (Commercial and Tax) (24 July 2025) (Ruling)

Neutral citation: [2025] KEHC 12641 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E347 OF 2021**

F GIKONYO, J

JULY 24, 2025

BETWEEN

TRIDEV BUILDERS COMPANY LIMITED APPLICANT

AND

WESTMOUNT INVESTMENTS LIMITED RESPONDENT

RULING

1. Before me is the applicant's notice of motion dated 11th June 2024, expressed to be brought under Sections 1A, 1B, 3A, 80(1) of the *Civil Procedure Act* and Order 45 of the Civil Procedure Rules, seeking a review of the ruling delivered on the 19th August 2022 and directions on the steps to be undertaken by each party following the setting aside of the arbitral award.
2. The application is based on the grounds laid out in the body of the application, the supporting affidavit sworn by the applicant's director, Manji Kanji Patel, on 11th June 2024. It also filed written submissions dated 11th May 2025.
3. The main ground is that the court failed to give guidelines on the steps following the annulment of the award given than only one aspect of the award was faulted (the interest) but the total sum in the said award was made up of several other components, with interest making up only a small percentage of it. There is clarification required as to whether, by setting aside the award, the matter should be referred to new arbitration proceedings for a re-determination on the issue of interest or what steps the applicant should follow to recover the aspects of the award that the court upheld.
4. The applicant relied on:-
 1. Lalji Meghji Patel & Company Limited v Presbyterian Foundation (Miscellaneous Application 113 of 2020) [2024] eKLR



2. Fredrick Otieno Outa v Jared Oduyo Okello & 3 others (2017) eKLR
5. The respondent opposed the application through grounds of opposition dated 28th January 2025, replying affidavit sworn by its director, Joseph Marie Ogeto on 28th January 2025 and written submissions dated 31st January 2025.
6. The salient points are that this court is functus officio and has no jurisdiction to entertain an application for review of a ruling emanating from an application made under Section 35 of the *Arbitration Act*. The *Arbitration Act* is a complete code that governs and regulates matters of Arbitration as provided in Section 10 of the said Act. The court's powers under Section 35 of the *Arbitration Act* in setting aside an award do not include issuing orders to parties on steps undertaken after the setting aside of the award.
7. The respondent faulted the applicant for filing the application twenty two months after the ruling, without explaining the delay. It contended that the application offends the principle of finality in litigation.
8. The respondent contended that the claim that the sole reason the court gave for setting aside the award was on the issue of interest is misleading. It also contended that the applicant has not pointed out any error apparent on the ruling that warrants a review, but has instead invited the court to reopen the case afresh. It argued that the application is fatally defective for failure to annexe a formal order of the court.
9. The respondent relied on:-
 1. Anne Mumbi Hinga v Victoria Njoki Gathera [2009] eKLR
 2. Nyutu Agrovet Limited v Airtel Networks Limited [2015] eKLR
 3. Kamconsult Limited v Telkom Kenya Ltd and Postal Corporation of Kenya, Civil Appeal No. 92 of 2009
 4. Odinga v Independent Electoral & Boundaries Commission & 3 others (Petition 5, 4 & 3 of 2013) [2013] KESC 8 (KLR) (Civ) (24 October 2013) (Ruling)
 5. Godson Sixty One School Limited v Symbion Kenya Limited (Civil Appeal 158, 159 & 160 of 2020 (Consolidated)) [2023] KECA 900 (KLR) (24 July 2023) (Judgment) S&M Properties v Vinayak Builders Ltd, Misc Application No. 126 of 2018
 6. Hosea Nyandika Mosagwe & 2 others v County Government of Nyamira [2022] eKLR
 7. Benjoh Amalgamated Limited & another v Kenya Commercial Bank Limited [2014] eKLR
 8. Simon Wahome Wachihi v Iriaini Tea Factory & Two Others, Civil Appeal No. 37 of 2015

Analysis and Determination

10. The preliminary point for consideration is whether the court has jurisdiction to grant a review of a ruling made on an application brought under section 35 of the *Arbitration Act*.
11. Jurisdiction is everything. Without it, a court must down its tools. Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment)



12. The Supreme Court in *Macharia & another v Kenya Commercial Bank Limited & 2 others* (Application 2 of 2011) [2012] KESC 8 (KLR) (23 October 2012) (Ruling) stated:-

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”

13. The present application is made substantively under Section 80 of the Civil Procedure Act and Order 45 of the Civil Procedure Rules. These provisions enable the court to review its own decision and outline the conditions that must be met.

14. The application seeks to review the court’s ruling on an application brought under Section 35 of the Arbitration Act.

15. Section 10 of the Arbitration Act limits the court’s intervention in matters governed by the Act, except as provided.

16. In *Anne Mumbi Hinga v Victoria Njoki Gathara* [2009] eKLR, the Court of Appeal observed:-

“...A careful look at all the provisions cited in the heading in the application and invoked by the appellant in the superior court clearly shows that, all the provisions including the Civil Procedure Act and rules do not apply to arbitral proceedings because Section 10 of the Arbitration Act makes the Arbitration Act a complete code and rule 11 of the Arbitration Rules cannot override Section 10 of the Arbitration Act...”

17. In *Godson Sixty One School Limited v Symbion Kenya Limited* (Civil Appeal 158, 159 & 160 of 2020 (Consolidated)) [supra], the appellant filed an appeal against a decision by the High Court on an application to review a decision made under section 35 of the Arbitration Act. The Court of Appeal pronounced that:-

“...by agreeing to arbitration, parties to a dispute necessarily agree that the provisions of the Act and nothing else will determine the fairness of the hearing. Typically, they agree to waive the right of appeal or review, which in context means that they waive the right to have the merits of their dispute re-litigated or re-considered. By agreeing to arbitration, the parties limit interference by courts to the grounds set out in section 35 of the Act. By necessary implication, they waive the right to rely on any further ground of appeal, review and common law or otherwise. Accordingly, we entirely agree with the learned judge that the appellant improperly invoked the provisions of the Civil Procedure Rules and the Civil Procedure Act by seeking to review the said decision.”

18. Accordingly, I find that the court has no jurisdiction to entertain an application seeking a review a court’s ruling on an application brought under Section 35 of the Arbitration Act. Parties should be guided by the Arbitration Act. I may, nonetheless, state in passing that, parties have the options of appeal-by aggrieved party- subject to the requirements of the law or commence arbitral proceedings in accordance with their agreement.

19. In the upshot, the application dated 11th June 2024 is dismissed. No orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH TEAMS ONLINE APPLICATION THIS 24TH DAY OF JULY, 2025



F. GIKONYO M

JUDGE

In the presence of: -

1. Wanja for Applicant
2. Saka for Respondent
3. CA Kinyua

