



**Tulsi Construction Limited v Kenwood Property Developers Ltd (Miscellaneous Civil Application E334 of 2019) [2024] KEHC 2473 (KLR) (Commercial and Tax) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2473 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**  
**COMMERCIAL AND TAX**  
**MISCELLANEOUS CIVIL APPLICATION E334 OF 2019**  
**FG MUGAMBI, J**  
**MARCH 8, 2024**

**BETWEEN**

**TULSI CONSTRUCTION LIMITED ..... CLAIMANT**

**AND**

**KENWOOD PROPERTY DEVELOPERS LTD ..... RESPONDENT**

**RULING**

**Introduction and Background**

1. This ruling determines two applications. The first application by the Claimant dated 5<sup>th</sup> August 2019 seeks the adoption, recognition and enforcement of the arbitral award. The second application by the respondent dated 18<sup>th</sup> September 2019 seeks to set aside the arbitral award.
2. The dispute between the parties emanates from an agreement for construction works dated 18<sup>th</sup> November, 2018 relating to a residential development in Thika to be erected on Plot No. 8361/4. A dispute arose in respect of Kshs. 40,499,368.08 for work done which prompted the claimant to refer the matter to arbitration. Mr. Stanley Kebathi was the appointed sole Arbitrator by the Architectural Association of Kenya. The arbitrator's award was issued on 1<sup>st</sup> March, 2019.
3. Following the directions of this court the applications were canvassed by way of written submissions. Only the claimant filed submissions dated 20<sup>th</sup> July, 2020 with respect to both applications despite the directions of this Court on 22<sup>nd</sup> September 2023 and 5<sup>th</sup> October 2023 asking the parties to provide hard copies of all their respective applications and submissions because the documents uploaded in the CTS were un downloadable.



## Analysis

4. Be that as it may, in the absence of any evidence to the contrary, it appears from the face of it that the application to set aside the arbitral award is time-barred. The same was allegedly brought 7 months after the publication of the award contrary to the provisions of the *Arbitration Act* that require such an application to be brought within 3 months of publication. Section 35(2) provides the timelines within which an application for setting aside an arbitral award may be brought. The subsection 3 states as follows:

“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.”

5. The award was published on 1<sup>st</sup> March, 2019 and released to the parties on 5<sup>th</sup> July, 2019. The delay was as a result of the delay by the respondent to clear the arbitrator's fees which the claimant cleared and a copy of the award was released. The respondent has not disputed that the application to set aside the award is dated 18<sup>th</sup> September 2019 was filed on 23<sup>rd</sup> September 2019 outside the stipulated timelines. As such, the application is not deserving of any further consideration and the same is dismissed with costs to the claimant.

6. I now move to determine the application dated 5<sup>th</sup> August, 2019 that seeks the recognition and enforcement of the arbitral award. The claimant has attached a certified copy of the contract which contains the arbitration clause under clause 45.1. A certified copy of the final award by the arbitrator has also been provided, in compliance with the provisions of Section 36 of the *Arbitration Act*. The Respondent has not filed any response to the application seeking to recognize the award.

7. The arbitrator in his final award published on 1<sup>st</sup> March 2029 found in favour of the claimant in the following terms:

- i. The Respondent is to pay the Claimant the sum of Kshs. 67,787,293.46 in full and final settlement of all the claims made in the arbitration within 30 days.
- ii. A sum of Kshs. 31,868,839 .38 will attract simple interest at the rate of 13% p.a from the date of this award till payment in full.
- iii. The Arbitrator's fee plus VAT is to be borne by the Respondent. In the event of any amount paid by the Claimant, the Claimant is to recover the same from the Respondent. the said sum is to attract interest at the rate of 13% p.a from the date of the award until payment in full.
- iv. The Respondent is to pay the Claimant costs in the arbitration reference on party to party basis and to be taxed if not agreed.”

## Determination

8. In the absence of any grounds for setting aside the award, or opposition to this application, I find that the application dated 5<sup>th</sup> August 2019 is merited. The same is allowed in the following terms:

- i. The final award prepared by Mr. Stanley Kebathi dated 1<sup>st</sup> March, 2019 be and is hereby recognized and adopted as a judgment of this court.



- ii. The Claimant is granted leave to enforce the award as a decree of this court.
- iii. The Respondent shall bear the costs of this application.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 8<sup>TH</sup> DAY OF MARCH 2024.**

**F. MUGAMBI**

**JUDGE**

