



**Aqua Plumbing Limited v Parbat Siyani Construction Limited
 (Commercial Arbitration Cause E035 & E019 of 2023 (Consolidated))
 [2024] KEHC 4614 (KLR) (Commercial and Tax) (6 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4614 (KLR)

**REPUBLIC OF KENYA
 IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
 COMMERCIAL AND TAX
 COMMERCIAL ARBITRATION CAUSE E035 & E019 OF 2023 (CONSOLIDATED)**

JWW MONG'ARE, J

MAY 6, 2024

IN THE MATTER OF AN APPLICATION TO SET ASIDE AN ARBITRATION AWARD

BETWEEN

BETWEEN

AQUA PLUMBING LIMITED APPLICANT

AND

PARBAT SIYANI CONSTRUCTION LIMITED RESPONDENT

AS CONSOLIDATED WITH

COMMERCIAL ARBITRATION CAUSE E019 OF 2023

BETWEEN

AQUA PLUMBING LIMITED APPLICANT

AND

PARBAT SIYANI CONSTRUCTION LIMITED RESPONDENT

RULING

1. There are two miscellaneous applications filed together in respect of the arbitral award issued by Hon. Arbitrator, Harun G. Nyakundion 6th December 2019 in respect of an arbitration proceedings between the two parties. The 1st of the said application was filed on 6th April 2023 by the Respondent in the Arbitral proceedings, Parbat Siyani Construction Limited (hereinafter called “the Applicant”), seeking



- to have the court to recognize and adopt the final Arbitral award as a judgment and decree of the court pursuant to section 36 and 37 of the *Arbitration Act*.
2. Subsequently upon filing this Application, the Claimant in the Arbitral Proceedings, Aqua Plumbing Limited (hereinafter called the “Respondent”), filed its own application on 22nd May 2023 seeking to set aside the said Arbitral Award. As part of its response, the Applicant raised a preliminary objection challenging the filing of the Application to set aside the award outside the mandatory 90-day period set out in the law.
 3. I have noted that there are two parallel proceedings in this matter relating to the Arbitral Award issued by Haroun G. Nyakundion 6th December 2019. For good order, the court will proceed to determine the application filed by the Respondent to set aside the arbitral award as a determination of the issues raised therein will conclusively determine the application by the Applicant for adoption and recognition of the Arbitral Award.
 4. By its application dated 22nd May 2023 seeking to set aside the said Arbitral Award, Aqua Plumbing Limited, the Respondent herein, has urged the court to find that the sole Arbitrator, Haron G. Nyakundi dealt with a dispute not contemplated by and /or not falling within the terms of reference to the arbitration and contained decisions on matters beyond the scope of the reference to arbitration.
 5. In its response, the Applicant raised a preliminary objection to the filing of this application to set aside the arbitral award. The Applicant argues that under section 35(3) of the *Arbitration Act*, an application to set aside an arbitral award must be filed before the lapse of 3 months from the date the award was published and or issued. Section 35(3) of the *Arbitration Act* states as follows: -
 - (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.
 6. The above section of the law was upheld in the case cited by the Applicant of *Nairobi City County vs. Kenya Commercial Bank of Kenya Limited* (Misc. App. No E174 of 2021(2022) KEHC (KLR) (Commercial and Tax) 4th February 2022 ruling where the court stated as follows:- “Section 35 (2) provides grounds under which the court may set aside an arbitral award, while subsection (3) sets the timeline within which an application to set aside an award should be made.”
 7. I note from the record the arbitral award in issue herein was issued on 6th December 2019 and that the present application to set aside the same was filed on 22nd May 2023. This therefore means the present application was brought after the lapse of 3 years and 5 months and therefore the application runs afoul the provisions of Section 35(3) of the *Arbitration Act*, cited above. It is important to bear in mind that the Arbitration Act is a self-sustaining statute and all motions and applications filed in respect of an arbitral dispute are to be dealt strictly within the confines of the said legislation. Having noted that this application was filed way out of the time allowed by law, this court is left with no other obligation but to dismiss the said application as being time barred. The Application to set aside the arbitral award of 6th December 2019 and filed on 22nd May 2023 is therefore dismissed.
 8. Having therefore dismissed the application brought to set aside the arbitral award and noting that on 6th April 2023, the Applicant had moved the court for the adoption and recognition of the said arbitral award, the court must therefore satisfy itself that this application meets the threshold set out in the *Act* for adoption and recognition of an arbitral Award.



9. Section 32 of the [Arbitration Act](#) sets out the form and content of a final award in that the same must be in writing and signed by the Arbitrator(s) and that it must be dated and it must also state the juridical seat of the arbitral proceedings. Section 32 of the [Arbitration Act](#) provides as follows: -

Form and contents of arbitral award

- (1) An arbitral award shall be made in writing and shall be signed by the arbitrator or the arbitrators. (2) For the purposes of subsection (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the arbitrators shall be sufficient so long as the reasons for any omitted signature are stated. (3) The arbitral award shall state the reasons upon which it is based, unless— (a) the parties have agreed that no reasons are to be given; or (b) the award is an arbitral award on agreed terms under section 31. (4) The arbitral award shall state the date of the award and the juridical seat of arbitration as determined in accordance with section 21(1), and the award shall be deemed to have been made at that juridical seat. (5) Subject to section 32B after the arbitral award is made, a signed copy shall be delivered to each party.

I perused the Award attached to these proceedings and I have satisfied myself that the Award seeking to be adopted and recognized as an order of this court has met the threshold set out under Section 32 of the [Arbitration Act](#). For the said Award to be adopted and recognized as a judgment of the court, section 36(3) provides that the court must be furnished with the original or a certified copy of the original award and the agreement with arbitration clause. Section 36(3) provides as follows”:-

- 3) Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement must furnish— (a) the original arbitral award or a duly certified copy of it; and (b) the original arbitration agreement or a duly certified copy of it.

10. I have perused the application dated 6th April 2023 for the adoption and recognition of the award herein and I am satisfied that the same conforms with the requirements set out under Section 36(3) of the [Arbitration Act](#). Accordingly, this court therefore adopts and recognizes the final award issued by the sole Arbitrator, Hon. Haron G. Nyakundi on 6th December 2019 as a judgment and decree of this court. This therefore means, the application of 6th April 2023 by the Applicant is allowed with costs to the Applicant to be paid by the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 6TH DAY OF MAY, 2024.

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

1. Ms. Gitonga holding brief for Kelvin Mogeni for the Claimant/Applicant.
2. Mr. Maranga for the Respondent.
3. Amos - Court Assistant

