



**Mngiwa General Contractors Limited Shake Distributors Limited
v Taita Taveta County Government (Miscellaneous Application
E001 of 2023) [2024] KEHC 17084 (KLR) (9 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 17084 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION E001 OF 2023**

DKN MAGARE, J

MAY 9, 2024

BETWEEN

**MNGIWA GENERAL CONTRACTORS LIMITED SHAKE DISTRIBUTORS
LIMITED APPLICANT**

AND

TAITA TAVETA COUNTY GOVERNMENT RESPONDENT

RULING

1. This is a Ruling on the Chamber Summons Application dated 7th March 2023.
2. The Application seeks the following:
 - a. The Partial Award dated 30th May 2022 and the Final Award rendered on 20th September 2022 by Jacqueline Waihenya, FCIArb relating to the matter of an Arbitration between Mngiwa General Contractors Limited Shake Distributors Limited and Taita Taveta County Government be recognized and enforced in accordance with the provisions of Section 36(1) of the *Arbitration Act*, 1995.
 - b. A Decree be issued accordingly.
3. The Application is premised on the Supporting Affidavit of Peter Mwangombe and grounds inter alia that the Partial and Final Awards are binding and the Respondent has not applied to set them aside
4. The Application was served upon the Respondent and a return of service dated 3rd April 2024 filed in Court on the same date.
5. It indicated that the Application was served upon the Respondent on 6th December 2023 and John Bwire & Associates Advocates on 4th April 2023.



6. There is no response to the Application. It is not opposed.

Analysis

7. I have perused the Application as well as the annexures to the supporting Affidavit. The record of the Arbitral proceedings is attached.

8. The jurisdiction of this court to recognize and enforce Arbitral Awards is well anchored in the [Arbitration Act, 1955](#).

9. Section 36 of the said the Act on recognition and enforcement of an Award provides:

- “(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 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.”

10. Section 37 on the other hand as regards grounds for refusal or recognition or enforcement of the award provides: -

- “(1) The recognition or enforcement of an arbitral award, irrespective of the state in which it was made, may be refused only-
 - (a) at the request of the party against whom it is invoked, if that party furnishes to the High Court proof that-
 - (i) a party to the arbitration agreement was under some incapacity; or
 - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or failing any indication of that law, under the law of the state where the arbitral award was made;
 - (iii) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration, or it contains decisions



on matters beyond the scope of the reference to arbitration, provided that if the decision on matters referred to arbitration can be separated from those not so referred, that part of the arbitral award which contains decisions on matters referred to arbitration may be recognized and enforced; or

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement by the parties, was not in accordance with the law of the state where the arbitration took place; or
 - (vi) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which, or under the law of which, that arbitral award was made; or
- (b) if the High Court finds that –
- (i) the subject matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or
 - (ii) the recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya.

(2) If an application for the setting aside or suspension of an arbitral award has been made to a court referred to in subsection (1) (a) (vi), the High Court may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the arbitral award, order the other party to provide appropriate security.”

11. As earlier observed, and now supported by the above authorities, there is no dispute that the Advocate raised the fees which the client settled in full.

12. In *Samura Engineering Limited v Don-Woods Co Ltd* 2014] eKLR it was held:

“Of course, section 36(1) of the Act requires an application in writing for recognition and enforcement of an award to be made. But, the application is subject to sections 36 and 37 of the Act, and I should add, to *the Constitution*. Section 36(3) of the Act makes it mandatory that the party applying for recognition and enforcement of the award should file; 1) the duly authenticated original award or a duly certified copy of it; and 2) the original arbitration agreement or certified copy of it. Doubtless, the award must be filed...”

13. In the instant case, I find that the Applicant has met the preconditions for the enforcement of the award. The onus was on the Respondent to demonstrate why the award should not be adopted. They did not oppose the Application. I allow it.

Determination

14. The upshot I allow the Application dated 23th April 2023 and issue the following Order:



- i. The Partial Award dated 30th May 2022 and the Final Award dated 20th September 2022 and issued by Jacqueline Waihenya, FCI Arb relating to the matter of an Arbitration between Mngiwa General Contractors Limited, Shake Distributors Limited and Taita Taveta County Government be recognized and enforced as a Decree of this Court in accordance with the provisions of Section 36(1) of the *Arbitration Act*, 1995.
- ii. There is no Order to costs.

DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 9TH DAY OF MAY, 2024. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:

No appearance for parties

Court Assistant - Brian

M.D. KIZITO, J.

