



Attorney General v N.K. Brothers Limited (Commercial Arbitration Cause E047 of 2021) [2024] KEHC 7806 (KLR) (Commercial and Tax) (20 June 2024) (Ruling)

Neutral citation: [2024] KEHC 7806 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL ARBITRATION CAUSE E047 OF 2021**

AA VISRAM, J

JUNE 20, 2024

BETWEEN

OFFICE OF THE ATTORNEY GENERAL APPLICANT

AND

N.K. BROTHERS LIMITED RESPONDENT

RULING

1. I have considered the application dated 16th October, 2023, together with the affidavit in support sworn on even date; the Preliminary Objection in opposition to the same dated 17th November, 2023; the submissions of the parties; and the applicable law.
2. The Applicant seeks to review the ruling delivered by Majanja, J on 26th September, 2023, allowing the setting aside of part of the Arbitral Award published on 21st May, 2021.
3. The Applicant relied on its written submissions which form part of the record, and which spoke, by and large, to a grey area in the law. The Applicant urged the court to rectify, what it submitted, was an error made on the part of the Learned Judge, in respect to his orders concerning the award of interest in the said ruling.
4. In opposition to the application, the Respondent filed a Preliminary Objection based on the ground that this court has no jurisdiction to order the relief sought by the Applicant. It relied on its written submissions which form part of the record.
5. Having considered the above, in my view, court intervention is strictly limited in arbitration matters. The extent of intervention is governed by the provisions of Section 10 of the *Arbitration Act* No.4 of 1995. The effect of Section 10 of the *Act* is that the ordinary rules of Civil Procedure do not apply to arbitration matters. The *Act* is a complete code and is a self-governing regime.



6. In this regard, I am of the view that the Arbitration Act does not contemplate any provision for review of a ruling arising from section 35 of the Act, which is the relief sought by the Applicant. In fact, no such provision known as review may be found anywhere in the entire Act.
7. Further to the above, pursuant to section 32 of the Act, an arbitral award is final and binding upon the parties. No recourse is available against an arbitral award, otherwise than in the manner provided by the Act. Therefore, in the event the Applicant intends to take issue with the said ruling pursuant to Section 35, it must do so in accordance with the provisions of the Act.
8. The above position is in line with the decision of the Supreme Court of Kenya in Nyutu Agrovet limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya branch (interested party) SCK Petition no. 12 of 2016 [2019] eKLR, where the court stated at paragraph 77 of its decision, that a decision by the High Court in relation to section 35 is final and binding save only for an appeal based on the below exception:-

“...the only instance that an appeal may lie from the High Court to the Court of Appeal on a determination made under Section 35 is where the High Court, in setting aside an arbitral award, has stepped outside the grounds set out in the said Section and thereby made a decision so grave, so manifestly wrong and which has completely closed the door of justice to either of the parties. This circumscribed and narrow jurisdiction should also be so sparingly exercised that only in the clearest of cases should the Court of Appeal assume jurisdiction.”
9. Guided by the above, I am not inclined to import the provisions of review from the Civil Procedure Rules into the Arbitration Act. To do so, especially in relation to Section 35 of the Act, would add a further layer of scrutiny by the court of an arbitral award prior to its recognition and enforcement. The creation of an extra hurdle, or further scrutiny, as the case may be, is contrary to the intention of arbitration, which is intended to be final and binding.
10. Moreover, given that the Act does not contemplate any process of review, importing the same would amount to usurping the limited and circumscribed role envisioned for only the Court of Appeal as articulated in Nyutu (Supra) in relation to Section 35 of the Act; and may even open up the flood gates in relation the said provision.
11. Based on the reasons above, I find that the application for review is without merit. The same is dismissed with costs. The Preliminary Objection is upheld.
12. The file is marked as closed.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 20TH DAY OF JUNE 2024

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

For the Applicant

For the Respondent

