



**D. Manji Construction Limited v Ramji Karman Holdings Limited (Miscellaneous Application E078 of 2023) [2024] KEHC 12717 (KLR) (Commercial and Tax) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12717 (KLR)

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

**MISCELLANEOUS APPLICATION E078 OF 2023**

**WA OKWANY, J**

**OCTOBER 17, 2024**

**IN THE MATTER OF THE ARBITRATION ACT NO. 4 OF 1995**

**BETWEEN**

**D. MANJI CONSTRUCTION LIMITED ..... APPLICANT**

**AND**

**RAMJI KARMAN HOLDINGS LIMITED ..... RESPONDENT**

**RULING**

1. This ruling is in respect to the Application dated 24<sup>th</sup> October, 2023 wherein the Applicant seeks orders for leave to enforce the Final Award made on 30<sup>th</sup> June 2023 (“the Arbitration Award”) by Mutinda Mutuku, MCI Arb, as a decree of this court. The Applicant also seeks the costs of this application.
2. The Application is supported by the affidavit of the Applicant’s Managing Director, Mr. Dipak Patel, and is premised on the grounds that: -
  1. By a contract made between the Applicant and the Respondent on 25<sup>th</sup> day of April 2009 (“the Contract”), the Applicant and the Respondent made an arbitration agreement/ by which they inter alia agreed to resolve all disputes arising between them on any matter arising out of or connected with the Contract through arbitration.
  2. A dispute arose between the Applicant and the Respondent on a matter arising out of the Contract and the same was referred to arbitration before Mutinda Mutuku MCI Arb (“the Arbitrator”) in accordance with the arbitration agreement.
  3. The arbitration proceedings were concluded on 30<sup>th</sup> June 2023 when the Arbitrator made the Arbitration Award.



4. In the Arbitration Award/ the Arbitrator inter alia—
    - a. Awarded and determined that the Respondent should pay the Applicant the sum of Kshs 21,949,393.00 (less Kshs 891,210.50 in lieu of defects) together with simple interest thereon from the 15<sup>th</sup> May 2013 at the rate of 15% p.a. until 30<sup>th</sup> June 2021 when the Arbitrator was appointed;
    - b. Awarded and directed that the Respondent pays the Applicant simple interest at a rate of 15% p.a. on Kshs 2,697,412 (certificate number 8) from 2<sup>nd</sup> August 2013 to 17<sup>th</sup> June 2021 when the certificate was paid
    - c. Awarded and directed that the Respondent pays the Applicant's costs of the arbitration.
    - d. Awarded and directed that the Respondent pays to the Applicant simple interest on any awarded amount and paid by the Claimant or any outstanding amount thereof, at the rate of 15% per annum from the date of notification of the award until the amount is paid in full.
    - e. Awarded and directed that the Respondent pays the Applicant simple interest on any awarded amount or any outstanding amount thereof, at the rate of 15% per annum from the date of notification of this award until the amount is paid in full.
  5. The Respondent has failed, neglected and/or refused to comply with the Arbitration Award and the Applicant now seeks to have the Arbitration Award enforced as a decree of this Honourable Courts
  6. The Respondent has not applied to have the Arbitration Award set aside.
  7. The Arbitration Award has been duly filed in this cause and notice thereof has been given to the Respondent.
3. The Respondent did not oppose the application but suffice is to say that the Respondent filed an application dated 16<sup>th</sup> November 2023 being Nairobi (Milimani) HCCOM. ARB. E085 of 2023 (hereinafter “the related matter”) seeking orders to set aside the same arbitral award that is the subject of this application.
  4. In a ruling delivered by this court in the said related matter on 11<sup>th</sup> July 2024, this court dismissed that the application to set aside the arbitral award upon finding that it was not merited.
  5. The law governing the enforcement and adoption of an arbitral award is contained in Section 36 of the *Arbitration Act* which provides as follows: -
    36. (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 a 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.
6. In *Samura Engineering Limited vs. Don-Wood 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...”
7. In the present case, I find that the applicant has met the preconditions set for the enforcement of the award. The onus therefore shifts to the respondent to demonstrate why the award should not be adopted. As I have already noted in this ruling, the Respondent did not file any response to the instant application. This means that the application remains unopposed. I have also noted hereinabove that the Respondent’s application to set aside the arbitral award was not successful. I find that nothing stands in the way of this court to stop it from adopting and enforcing the arbitral award.
8. Consequently, I find that the application dated October 24, 2023 is merited and I therefore allow it with no orders as to costs.
9. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 17<sup>TH</sup> DAY OF OCTOBER 2024.**

**W. A. OKWANY**

**JUDGE**

