



Wanadenge Housing Cooperative Society Limited v Ogola (Arbitration Cause E009 of 2023) [2023] KEHC 2217 (KLR) (Commercial and Tax) (16 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2217 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
ARBITRATION CAUSE E009 OF 2023**

JWW MONG'ARE, J

MARCH 16, 2023

IN THE MATTER OF THE ARBITRATION ACT 1995

AND

**IN THE MATTER OF AN APPLICATION FOR THE
RECOGNITION AND ENFORCEMENT OF AN ARBITRAL
AWARD**

BETWEEN

WANADENGE HOUSING COOPERATIVE SOCIETY LIMITED APPLICANT

AND

MILDRED ADHIAMBO OGOLA RESPONDENT

RULING

1. The application before the court is a chamber summons dated January 20, 2023 brought under section 36 of the *Arbitration Act* 1995 and rules 4(2), 8 and 9 of the *Arbitration Rules 1997* wherein the applicant sought an order to recognize and enforce the arbitral award published on February 18, 2022 as granted and an order to allow for execution of the said arbitral award.
2. The application is premised on the grounds that the applicant successfully prosecuted arbitration proceedings against the respondent and award was issued in its favor on February 18, 2022. Despite the respondent raising an objection under section 35 of the *Arbitration Act* where he was seeking a clarification of the arbitral award, the respondent failed to prosecute the said objection or to adduce evidence or follow the directions of the arbitrator.



3. The applicant has filed the application for enforcement and execution of the award as provided for by law to avoid it to continue to suffer irreparable loss and fail to benefit from its award since the respondent stands to suffer no prejudice if the application is allowed.
4. The application is undefended since despite great efforts to serve the respondent with the process and subsequent hearing notice, the respondent did not file a response to the application nor attend its hearing.
5. A brief background to the award subject matter of the application herein is that the parties entered into a sale agreement for sale and purchase of land which provided for dispute resolution through arbitration. A dispute arose and the parties went through arbitration proceedings which culminated in an arbitral award being issued on February 18, 2022 by a sole arbitrator, Mr Peter Keya. The agreement and arbitral award are annexed and marked as 'MO1' and 'MO2' in the applicant's supporting affidavit.
6. Accordingly, I am satisfied that the applicant submitted to the arbitration process to the very end and even sought a clarification, albeit they failed to prosecute the same, until its completion and were present up to the issuance of the arbitral award and are therefore aware of the orders contained therein.
7. I note from the letters annexed to the instant application that the respondent indeed sought a clarification on the award with regard to the surveyor's costs. However the respondent did not follow the directions of the arbitrator nor present any evidence on the issue.
8. I am guided by the provisions of section 36(1) of the Arbitration Act which provides as follows:-

“A domestic arbitral award, shall be recognized as binding and, upon application in writing to the High Court, shall be enforced subject to this section and section 37.”
9. Section 36(3) thereto goes on to state:-

“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. In this case, the applicant has produced a sale agreement which includes an arbitral clause and further a duly certified arbitral award. I therefore find no reason as to why the court would not enforce the award.
11. The upshot of the above findings is that prayer 2 and 3 of the application are granted with costs awarded to the applicant as follows:-
 - a. That the honourable court herein does hereby recognize and enforce the arbitral award published on February 18, 2022.
 - b. That the honourable court is pleased to allow for the execution of the said arbitral award.
 - c. That costs of this application to the applicant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 16TH DAY OF MARCH 2023

.....
J. W. W. MONGARE



JUDGE

In the presence of:-

Mr. Ochieng for the Applicant/2nd defendant

No appearance for the Respondent/Plaintiff

Sylvia- court Assistant

