



**Briant v Kasyap Builders Limited (Miscellaneous Application
184 of 2022) [2023] KEHC 18225 (KLR) (2 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 18225 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS APPLICATION 184 OF 2022**

DKN MAGARE, J

MAY 2, 2023

BETWEEN

REGINA MUTIE NGII BRIANT APPLICANT

AND

KASYAP BUILDERS LIMITED RESPONDENT

RULING

1. This Ruling is in respect of the chamber summons application filed under Order 46 Rule 18, and section 36 of the [Arbitration Act](#) 1995 (as amended).
2. The application was made on 21/9/2022 and supported by the affidavit of Mutie Regina Ngigi Bryant sworn on 19/9/22 in that application the Applicant sates that there was a contract dated 28/2/2028 pursuant to which they Appointed Anthony Kimani FCI Arb as the sole Arbitrator. The contract is in pages 9 – 17 of the anneture marked RMB1. The contract is signed at page 17 by both parties. There was termination of the contract on 25/7/2020 and on 13/10/2020, the Applicant submitted to the Applicant intention to refer the matter to arbitration. The letter was received promptly on 14/10/2020.
3. By a letter dated 9/11/2020 the Respondent’s Advocates rejected the choice of arbitrator made by the Applicant and invoked clause 13.1 of the contract to have the chair or vice chair of the Architectural association of the Chartered Institute of Arbitrators approve one for them.
4. By a letter dated 4/12/2022 the chartered institute of Arbitrators appointed Anthony Gitari Kimani as an arbitrator. He accepted the appointment on 20/12/2020 and parties were duly informed.
5. Upon hearing the parties an award was made and is at page 29 of the annexture. In clause 12, it deals with claim for damages. At clause 13.3. it also deals with materials on site



6. In *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch (Interested Party)* [2019] eKLR the supreme court noted as doth: -

“56] In the above case, the Court noted that Article 5 could be compared to section 47 of the Singapore Arbitration Act (cap 10, 2002 Rev Ed), which governed the proceedings of that case and provides:

“The court shall not have jurisdiction to confirm, vary, set aside or remit an award on an arbitration agreement except where so provided in this Act.”

In that context, the Court reasoned that:

“In our view, having regard to the need for a broadly consistent approach to the interpretation of the Act and the Model Law, s 47 of the Act should be construed in a manner that is consistent with the intent underlying art 5 of the Model Law. Section 47 of the Act states that the Court shall not have jurisdiction to interfere with an arbitral award except where so provided in the Act. The certainty which is sought to be achieved by this provision would be significantly undermined if the courts retained a concurrent ‘supervisory jurisdiction’ over arbitral proceedings or awards that could be exercised by the grant of declaratory orders not expressly provided for in the Act. In short, in situations expressly regulated by the Act, the courts should only intervene where so provided in the Act” [Emphasis mine]

7. Basically our duty is to strictly deal with situations expressly regulated by the Act. As such courts should only intervene where so provided in the Act”. There is nothing in the case herein, that requires our intervention. The decision is lawful, not against public policy and as per the reference. No one has pointed to me any fraud or omission on part of the Arbitrator. I also find none proved.
8. The supreme court has emphasized the need for finality in these matters, and intervention in in very limited space. In *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch (Interested Party)* (*supra*), they had this to posit: -

“[106] One of the main objectives of preferring arbitration to Court litigation is the principle of finality associated with doctrine of res judicata that is deeply rooted in public international law. Section 32A captures this principle: “Except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it....” Most parties, especially those engaged in commercial transactions, desire expeditious and absolute determinations of their disputes to enable them go on with their businesses.[8] They require a final and enforceable outcome. That is why the Section goes on to limit recourse “against the award otherwise than in the manner provided by this Act.

9. Having dismissed the application to set aside the award, in Miscellaneous 190 of 2022, I now turn to this application. There is no impediment for the enforcement of the award herein. I am satisfied that there was an arbitral agreement and an award has resulted. There is no public policy issues on the same.
10. The award is legal and within the parameters reference. I therefore adopt the said award as the judgment of this court.

Determination

11. I therefore allow the application dated 21/9/2022 in the following terms: -



a. The final Arbitral award dated 6/9/22 delivered by Mr. Anthony Kimani FC Arb, as a sole arbitrator in the arbitration matter between Regina Mutie Ngiii Briant and Kasyap Builders Ltd is hereby recognized and be entered a s judgment of the High Court of Kenya, at Mombasa and a decree do issue in terms of the award.

b. Costs of the Application of Ksh 30,000/= is granted to the Applicant

DELIVERED, DATED and SIGNED at MOMBASA on this 2nd day of **May 2023**. Judgment delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:

Miss Mohamud for the Applicant

No appearance for the Respondent

Court Assistant - **FIRDAUS**

Page 3 of 3 M.D. KIZITO , J.

