



**Runji Partners Consultant Engineers and Planners v National Water Conservation and Pipeline Corporation (Arbitration Cause E002 of 2020) [2023] KEHC 18829 (KLR) (Commercial and Tax) (16 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18829 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
ARBITRATION CAUSE E002 OF 2020**

**EC MWITA, J**

**JUNE 16, 2023**

**BETWEEN**

**RUNJI PARTNERS CONSULTANT ENGINEERS AND PLANNERS ..... APPLICANT**

**AND**

**NATIONAL WATER CONSERVATION AND PIPELINE CORPORATION ..... RESPONDENT**

**RULING**

1. This is an application for leave to amend, brought under rule 11 of the *Arbitration Rules* (the Rules). The applicant seeks to amend Chamber Summons dated March 1, 2021, to include the order on certificate of costs and expenses dated July 14, 2021. The reason given for seeking to amend, is that the order on certificate of costs forms part of the award and will eventually be incorporated in the decree.
2. The applicant argues that rule 11 of the *Rules* allows application of *Civil Procedure Rules* to a small extent in arbitration proceedings. For that reason, proceedings under rules 6 and 7 of the *Arbitration Rules* are, therefore, proceedings for purposes of rule 11. The applicant holds the view, that since the main application has not been heard, leave should be granted.
3. The respondent opposes the application on grounds that section 11 of the *Arbitration Act* and Order 8 of the *Civil Procedure Rules* divest the court of jurisdiction to grant leave to amend. According to the respondent, under section 36(1) of the Act, the award is final and there is nothing like “together with certificate of costs” that leave is sought to include.
4. It is the respondent’s position that the certificate of costs cannot be enforced in this matter given that a Notice of Appeal has been lodged in the Court of Appeal challenging this court’s order



dismissing the application in Arbitration No E025 of 2021. According to the respondent, there is also an application for stay pending appeal that is yet to be heard. For that reason, this application should await determination of the intended appeal.

5. The respondent relies on *Anne Mumbi Hinga v Victoria Njoki Gathara* [2009] eKLR, that civil procedure rules do not apply to arbitral proceedings.
6. The respondent further cites the decision in *Gladys Nduku Ntbuki v Letshego Kenya Limited; Mueni Charles Maingi (Interested Party)* [2021] eKLR, among other decisions, on the conditions for granting leave to amend.
7. The applicant has sought leave to amend its application for enforcement to include a prayer for certificate of costs so that the court determines the issue of enforcement of the award at once. The respondent takes the view that this court has no jurisdiction to grant leave to amend. The reason advanced to support this view, is that the provisions of the Act do not provide for amendment.
8. The respondent has merely stated that the court has been divested of jurisdiction without showing how. Where a party alleges that the court has no jurisdiction, he must go further and show which provision of the *constitution* or statute ousts the court's jurisdiction.
9. The jurisdiction of this court stems from the *constitution*, in particular article 165(3), which cloths the court with original jurisdiction in criminal and civil matters. What is before this court is an application of a civil nature although arising from arbitral proceedings. The court has wide discretion to deal with applications arising from these proceedings in so far as they do not exceed the powers of the court under that statute.
10. In any case, a reading of rule 4 (2) of the Rules is clear that other applications may be brought after an award has been filed in court. That is why the rule states that "All applications subsequent to filing of an award shall be by summons in the cause in which the award has been filed and shall be served on all parties at least seven days before the hearing date."
11. The arbitral tribunal determined costs and expenses upon the applicant filing the bill of costs which means the arbitral tribunal had reserved determination of costs and expenses. Once determined, the order on costs and expenses forms part of the award and is enforced together with the award.
12. The respondent's argument that it has lodged a notice of appeal and filed an application for stay would not be reason for declining the application. The respondent has also not shown what prejudice it will suffer if leave to amend is granted.
13. In the circumstances, I find the application meritorious and is for allowing. Consequently, and for the reasons stated above, the application is allowed. Leave is granted to the applicant to amend the application dated May 31, 2022. The amended application be filed and served within 14 days. No order as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 16<sup>TH</sup> DAY OF JUNE 2023**

**E C MWITA**

**JUDGE**

