



**China Tech International Corp v Sakima Investment Sarl; Gulf Badar Group (Kenya) Limited (Interested Party) (Miscellaneous Application E144 of 2023) [2023] KEHC 21610 (KLR) (24 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 21610 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS APPLICATION E144 OF 2023  
DKN MAGARE, J  
JULY 24, 2023**

**BETWEEN**

**CHINA TECH INTERNATIONAL CORP ..... APPLICANT**

**AND**

**SAKIMA INVESTMENT SARL ..... RESPONDENT**

**AND**

**GULF BADAR GROUP (KENYA) LIMITED ..... INTERESTED PARTY**

**JUDGMENT**

1. The Applicant has made an application under Section 36(2) of the *Arbitration Act*. The said Section states:

“An international arbitration award shall be recognized as binding and enforced in accordance to the provisions of the New York Convention or any other convention to which Kenya is signatory and relating to arbitral awards”

2. To enable the High Court recognize and enforce an award, Recognition and enforcement of awards, the original arbitral award or a duly certified copy of it; and the original arbitration agreement or a duly certified copy of it, should be furnished.

3. He has also sought prayers 3 and 4. However, I strike our prayer 3 as this court’s jurisdiction is limited to adopting a decision. I am satisfied that the award given on 22/4/2021 and certified in Paris by Ann Ferrace Mourn, the Deputy Secretary of the International Court of Arbitration, has not been challenged.



4. The jurisdiction of this court is to be satisfied that there is a valid arbitration agreement, there is an award, it is not against Public Policy. In *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch (Interested Party)* [2019] eKLR, the supreme court stated as follows: -

“ [105] Finally, the appellant argued that the principle of finality in arbitrations applies only to an arbitration award itself and not to any Court proceedings founded on it. I do not think this is correct.

[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 to 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.”

[107] In the circumstance, I concur with the respondent that, read together, Sections 10 and 35 of the *Arbitration Act* restrict judicial intervention in the arbitral process to expedite dispute resolution while maintaining the sanctity of the principle of finality in the entire arbitral process. If the principle of finality is limited to the arbitral awards only and not to any court proceedings founded on them as the appellant contended, then the objectives of arbitration would be defeated and arbitration will be “a precursor to litigation.”[9] This is because any Court proceedings that render an award unenforceable affects the principle of finality.”

5. Time for setting aside the award under section 35 of the *Arbitration Act* has lapsed. There is nothing standing between the award and its recognition.
6. As I part, I note that the respondent appointed two sets of advocates who had diametrically opposed instructions. They wanted the court to settle their dispute. The court declined and advised them to submit whatever they wished to say. I took it as a gimmick to delay conclusion of this matter.
7. There is an arbitration dated 7/6/2023, merited and I therefore allow the same through recognition partial award dated 22/4/2021 made by Desmond Ang, Sole Arbitrator, in Hong Kong, through the International Court of Arbitration in the Case Number 250121/PTA/XZG between China Tech International Copr and Sakina Investment Sarl.
8. Given that the agreement pursuant to the sale agreement dated 26/3/2019. Article 12 thereof, which provides as follows: -

“ All disputes in connection with this contract or the execution thereof shall amicably be settled through negotiation. If no settlement can be reached, the case in dispute shall be resolved by arbitration in Hong Kong under the Ruling commission in Hong Kong. The decision made by the court shall be accepted as final and binding upon both parties. Fees for arbitration shall be borne by the losing party unless the court otherwise orders.”

9. I am satisfied that the ICC sitting in Hong Kong was entitled to reach the award that it did. The decision made on is therefore an arbitration decision made pursuant to clause 12.



10. The agreement is signed by the sole arbitrator and deals with issues that it ought to deal with. Consequently, that I find that the application is merited.

### **Determination**

11. Consequent upon the foregoing, I make the following orders: -
- a. The award given on 22/4/2021 by Desmond ANG (Sole Arbitrator) through the International Court of Arbitration in the Case Number 250121/PTA/XZG between China Tech International Corp Versus Sakima Investment Sarl is hereby adopted and recognized as a decree of this court.
  - b. The award shall consequently be enforced as an order of the court.
  - c. Given that this was a partial award, each party bear its costs.
  - d. All other prayers are declined
  - e. The file is closed.

**DELIVERED, DATED AND SIGNED AT MOMBASA ON THIS 24<sup>TH</sup> DAY OF JULY, 2023.  
JUDGMENT DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**KIZITO MAGARE**

**JUDGE**

In the presence of: -

Karina for the Applicant

Omondi for the Respondent

Azei for the Respondent

Court Assistant - Brian

