



REPUBLIC OF KENYA



KENYA LAW

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**Njenga v Kahuho (Miscellaneous Application E010 of 2022)
[2023] KEHC 20289 (KLR) (Commercial and Tax) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20289 (KLR)

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

MISCELLANEOUS APPLICATION E010 OF 2022

A MABEYA, J

JULY 17, 2023

BETWEEN

WINNIE WANJIRU NJENGA APPLICANT

AND

JANE WAITHERA KAHUHO RESPONDENT

RULING

1. Before Court is the application dated November 14, 2022 brought under section 36 of the *Arbitration Act* 1995, Rule 4 of the *Arbitration Rules* 1997. The same seeks recognition and enforcement of the final arbitration award issued on November 4, 2022 as a decree of the Court.
2. The application was premised on the grounds set out on the face of it and on the supporting affidavit of Winnie Wanjiru Njenga sworn on November 14, 2022. The dispute between the parties arose from an agreement dated October 1, 2021 for the sale of a property known as Ngong/Ngong/98384. The matter was referred to arbitration and Hon George Eshuchi was appointed as an arbitrator. The final award was published on November 4, 2022 in favour of the applicant and the respondent had not challenged the award. The applicant therefore prayed for recognition of the award.
3. The respondent did not participate in the proceedings and did not file any document to oppose the application.
4. Enforcement of an award is governed by section 36 of the *Arbitration Act* which provides: -

“ 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.

5. In *Samura Engineering Limited v Don-Wood Co Ltd* [2014] eKLR the court of held as follows: -

“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...”

6. The record shows that the application was served upon the respondent and she chose not to participate in the proceedings. The applicant has annexed the certified copy of the arbitration agreement and the arbitral award. In this regard, I find that the applicant has met the preconditions for the enforcement of the award. The onus therefore shifts to the respondent to demonstrate why the award should not be adopted and since there is no response to the application, there is nothing impedes the Court from granting the orders sought.
7. Accordingly, I find the application dated November 14, 2022 to be merited and allow the same as prayed.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 17TH DAY OF JULY, 2023.

A. MABEYA, FCIArb

JUDGE

