



**Safaricom Investment Co-operative Limited v Njau (Miscellaneous Application E052 of 2023)
[2024] KEHC 12718 (KLR) (Commercial and Tax) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12718 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E052 OF 2023
WA OKWANY & WA OKWANY, JJ
OCTOBER 17, 2024**

BETWEEN

SAFARICOM INVESTMENT CO-OPERATIVE LIMITED APPLICANT

AND

LEONARD NJOGU NJAU RESPONDENT

RULING

1. This ruling is in respect to the application dated 30th June 2023 wherein the Applicant seeks orders That That the Final Award final arbitral award published on 18th December 2022 and the arbitral award on costs published on 19th May 2023 taxing the Party & Party costs taxed at Kshs. 1,056,717/=be recognized, adopted and enforced as a decree of the High Court. The application is made under section 36 of the Arbitration Act (“the Act”) and is supported by the affidavit sworn on 30th June 2023 and supplementary affidavit sworn on 23rd October 2023 by the Applicant’s Legal Officer Ms. Anges Anjao Bukachi and is premised on the grounds That: -
 - i. The Applicant is the registered proprietor over parcels of land known as Title Numbers Donyo Sabuk/ Koma Rock Block 1/ 36503, Donyo Sabuk/ Koma Rock Block 1/ 36507, Donyo Sabuk/ Koma Rock Block 1/ 36537 and Donyo Sabuk/ Koma Rock Block 1/ 36540 on which houses christened as Kantafu Serene Homes Numbers. A5, B3, D6 and D10 respectively. The same are herein after referred to as “the Suit Properties”.
 - ii. The Applicant and the Respondent entered into an agreement for sale over the Suit Properties dated 25th August 2020. In which the Applicant agreed to sell and the Respondent agreed to purchase the 25th August 2020 at a culminative purchase price of Kshs. 11,600,000/=.



- iii. The Respondent did not pay a cent towards the agreed purchase price of Kshs. 11,600,000/= and a dispute emerged between Safaricom Investment Cooperative Limited and Leonard Njogu Njau.
- iv. Clause J of the agreement for sale dated 25th August 2020 contained an Arbitration agreement to where Safaricom Investment Co-operative Limited And Leonard Njogu Njau agreed to refer all disputes arising under the agreement to arbitration before a single Arbitrator in accordance with the provisions of the Arbitration Act of Kenya (Act No. 4 of 1995) appointed by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch, Nairobi on application from either party should they fail to agree on an Arbitrator in 14 days.
- v. On 14th October 2021, there being no consensus on who ought to arbitrate over the dispute, the Chairperson of the Chartered institute of Arbitrators- Kenya Branch appointed the Honourable Mr. James Mang'erere, MCI Arb to hear and. determine the dispute.
- vi. The dispute between Safaricom Investment Co-operative Limited And Leonard Njogu Njau was heard and determined by, a sole arbitrator, the Honourable Mr. James Mang'erere, MCI Arb who published an award in Nairobi on 18th December 2022 vitiating/voiding the agreement for sale dated
- vii. 25th August 2020, ordering the Leonard Njogu Njau to deliver vacant possession of the Houses referred to above, the Tribunal issued an order of his servants, employees, assignees or parties claiming under him from trespassing, entering into, alienating, dealing with and/or interfering with Safaricom Investment Co-operative Limited's quiet possession of the suit properties or in any manner whatsoever dealing with the said properties.
- viii. Further, in the award published on 18th December 2022, Safaricom Investment Co-operative Limited was awarded costs of the arbitration plus interest on costs to be determined upon written submission to the Tribunal by each party.
- ix. Each, party filed their respective written submissions on costs and on 19th May 2023 by the Honourable James Mangerere, sole arbitrator, published an award awarding Safaricom Investment Co-operative Limited Party & Party costs assessed at Kshs. 1,056,717/=.
- x. Leonard Njogu Njau has not obeyed the terms of the arbitral awards as required to date thus making it necessary to approach this Honourable Court for assistance in recognition and enforcement of the awards.
- xi. The applicants in Milimani HCCOMMARB E 048 Of 2023- Kinyanjui & Njau Advocates v Safaricom Investment Co-operative Limited seek to have the Award published on 18th December 2022.
- xii. On 19th June 2023, the Hon. Mr. Justice Prof. (dr) Sifuna Nixon issued directions on the hearing of Milimani HCCOMMARB E 048 OF 2023 and scheduled the same for mention to confirm compliance on 4th July 2023.
- xiii. It in the interest of justice That this application to enforce the arbitral awards be consolidated and together with Milimani HCCOMMARB E 048 OF 2023 (which seeks to set the same aside) to enable the Learned Judge to fully appreciate the facts in this matter in making the Court's determination on the fate of the Arbitral Award published by the Honourable; Arbitrator.



- xiv. Upon consolidation of this application with MILIMANI HCCOMMARB E 048 OF 2023, and ultimate hearing of both applications side by side, it is in the interests of justice That the Applications application in MILIMANI HCCOMMARB E 048 OF 2023 be dismissed with costs and the Arbitral Awards published on 18th December 2022 and 19th May 2023 be adopted as a judgement of this Court to enable Safaricom Investment Co-operative Limited to enjoy the just fruits of the awards. It in the interest of justice That Safaricom Investment Co-operative Limited be awarded costs of this application.
2. The Respondent opposed the application through the grounds of opposition dated 26th September 2023 which contains the following grounds: -
- a. That the Applicant is guilty of laches.
 - b. That the purported Award issued on 18th December 2022 is illegal, null and void.
 - c. That the award issued on 18th December 2022 is in breach of the rules of natural justice hence the Respondent's application dated 15th June 2023 in Nairobi HCC Misc. No. E048 of 2023, Leonard Njogu Njau v Safaricom Investment Cooperative Society Limited.
 - d. That the Award issued on 18th December 2022 is contrary to public policy, hence incapable of being recognized or enforced.
 - e. That the Award issued on 18th December 2022 delves into a subject matter foreign to the agreement dated 25th August 2020.
 - f. That the Award issued on 18th December 2022 relied heavily on Nairobi HCC Misc, No. E100 of 2022; Safaricom Investment Cooperative Society Limited v Francis Mbugua Kinyanjui & Leonard Njogu Njau t/a Kinyanjui & Njau Advocates in its decision whilst the said case had yet to be determined much to the detriment of the Respondent herein.
 - g. That purported Final Award issued on 19th May 2023 K, equally, contrary to public policy hence incapable of being recognized or enforced.
 - h. That the same is not anchored in law.
 - i. That the Applicant's application dated 30th June 2023 has not availed an authenticated copy of the impugned Award dated 18th December 2022 or a certified copy thereof thus offending the provisions of sections 36 and 37 of the Arbitration Act, CAP 49 of the laws of Kenya.
 - j. That it is in the interests of justice That the Award issued on 18th December 2022 and the purported Final Award issued on 19th May 2023 are set aside unconditionally.
 - k. That it is in the interests of justice That the Applicant's Application dated 30th June 2023 is dismissed with costs to the Respondent.
3. The Application was canvassed by way of written submissions which I have considered.
4. I have considered the pleadings filed herein and the parties respect submissions. I note That the grounds listed in the Respondent's Grounds of Opposition in response to the instant application are the same grounds That the Respondent presented in his application in Nairobi HCC Misc. No. E048 of 2023, Leonard Njogu Njau vs. Safaricom Investment Cooperative Society Limited (hereinafter "the Setting Aside Application) wherein he sought orders for the setting aside of the same arbitral award That the Applicant herein seeks to enforce.



5. This court has already delivered its ruling in the setting aside application which it dismissed upon finding That it was not merited.
6. The law governing the enforcement and adoption of an arbitral award is contained in Section 36 of the Arbitration Act which provides as follows: -
 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.
7. In *Samura Engineering Limited vs. Don-Wood Co Ltd* [2014] eKLR it was held: -

“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...”
8. In the present case, 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. As I have already noted in this ruling, the Respondent’s application to set aside the arbitral was dismissed for want of merit and for being filed outside the stipulated timelines. I therefore find That nothing stands in the way of this court to stop it from adopting and enforcing the arbitral award.
9. Consequently, I find That the application dated 30th June 2023 is merited and I therefore allow it with no orders as to costs.
10. It is so ordered.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 17TH DAY OF OCTOBER 2024.

W. A. OKWANY

JUDGE

