



**Athi Water Works Development Agency v Stansha Limited (Commercial  
Miscellaneous Application E216 of 2024) [2024] KEHC 14483 (KLR)  
(Commercial and Tax) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14483 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E216 OF 2024  
AA VISRAM, J  
NOVEMBER 18, 2024**

**BETWEEN**

**ATHI WATER WORKS DEVELOPMENT AGENCY ..... APPLICANT**

**AND**

**STANSHA LIMITED ..... RESPONDENT**

**RULING**

1. This ruling determines the Chamber Summons Application dated 16<sup>th</sup> January, 2024, seeking recognition and enforcement of the Award dated 13<sup>th</sup> January, 2023; and the Application dated 13<sup>th</sup> March, 2024, seeking to set aside the Award.
2. I have considered the grounds on the face of the relevant applications, the affidavits filed in support and in opposition to the said applications, the submissions of the parties, and the applicable law.
3. It is not in dispute that the arbitrator published the Award on 14<sup>th</sup> January, 2023, and that the application seeking to set aside the Award is filed on 13<sup>th</sup> March, 2024, more than one year after its publication.
4. The starting point is whether or not the application seeking to set aside the Award is time barred?
5. Section 32A of the *Arbitration Act* 1995 (“the Act”) is titled “Effect of award”. The said section states as follows:-

“Except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it, and no recourse is available against the award otherwise than in the manner provided by this Act.”



6. Further, the only recourse available to a party that intends to challenge an award is found at Section 35 of the Act. It states as follows at subsection (3):-

“(3) An application for setting aside the arbitral award may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award, or if a request had been made under section 34 from the date on which that request had been disposed of by the arbitral award.” (*emphasis mine*)

7. Finally, Section 10 of the Act states that except as provided by this Act, no court shall intervene in matters governed by this Act. To my mind, the timelines set out in the *Arbitration Act* are therefore inflexible and inextensible. Accordingly, having failed to raise the challenge within the stipulated timeline of three months, the Application seeking to set aside the Award is accordingly time barred.

8. The next question, is whether or not the application dated 16<sup>th</sup> January, 2024, complies with the criteria relevant to recognition and enforcement of an award?

9. Section 36 of the *Act* provides as follows:-

Recognition and enforcement of awards

(1) A domestic arbitral award, 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) An international arbitration award shall be recognised 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.

(3) Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement must furnish—

(a) the original arbitral award or a duly certified copy of it; and

(b) the original arbitration agreement or a duly certified copy of it.

(4) 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.

10. Looking at the record, I see that a certified copy of the Award is found at pages 93 to 181 of the Applicant’s supporting affidavit. Further, a certified copy of the contract between the parties, containing the arbitration agreement is found at pages 1 to 88, both at annexure 1 of the supporting affidavit. The documentation does not require translation. I am therefore satisfied that the above requirements have been met.

11. Based on the reasons set out above, I am satisfied that the Application dated 16<sup>th</sup> January, 2024, ought to be, and is hereby allowed as prayed for, and the Application dated 13<sup>th</sup> March, 2024, ought to be, and is hereby dismissed with costs.

12. Accordingly, the arbitral award dated 13<sup>th</sup> January, 2023, is hereby recognised, adopted, and enforced as a decree of this Honourable Court.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 18<sup>TH</sup> DAY OF NOVEMBER 2024.**

**ALEEM VISRAM, FCIArb**



**JUDGE**

**In the presence of;**

..... For the Applicant

..... For the Respondent

