



Kiplagat & another v Kencom Sacco Society Limited (Commercial Arbitration Cause E011 of 2024) [2024] KEHC 13609 (KLR) (Commercial and Tax) (7 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13609 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL ARBITRATION CAUSE E011 OF 2024**

H NAMISI, J

NOVEMBER 7, 2024

BETWEEN

PHILIP KIPKEMOI KIPLAGAT 1ST APPLICANT

JANET CHEPKEMOI BIWOTT 2ND APPLICANT

AND

KENCOM SACCO SOCIETY LIMITED RESPONDENT

RULING

1. The Applicants herein have filed Chamber Summons dated 21 February 2024 seeking leave to enforce the Final Award dated and published on 27th November 2023 by Arbitrator, Hon. Rina Ahluwalia Chatrath. MCIArb as a decree of this Court. The Application is supported by the Affidavit sworn by the 2nd Applicant as well as the grounds on the face of the application.
2. In her Affidavit, the 2nd Applicant deponed that the Applicants and Respondent were parties to an Agreement for Sale of immovable property, which was dated 15th October 2020. Clause 30 of the said Agreement provided that disputes would be resolved through arbitration, where the parties would appoint a single Arbitrator. The 2nd Applicant averred that the Respondent did not participate in the appointment of the Arbitrator, neither did they participate in the arbitral proceedings.
3. In their submissions dated 20 September 2024, the Applicants have cited the provisions of section 36 of the *Arbitration Act*, 1995, which provide for the recognition and enforcement of awards as follows:

SUBPARA (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)



- (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. I note that despite evidence of service upon the Respondent on numerous occasions, the Respondent did not participate in these proceedings. They did not file any pleadings nor submissions.
5. I also take cognisance of the provisions of Section 35 of the Act that provides for setting aside arbitral awards. In particular, section 35 (3) provides that 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. The Respondent has not challenged the arbitral award.
6. Consequently, I find that the application dated 21 February 2024 is merited and I, therefore, allow it with costs to the Applicants.

DATED AND DELIVERED AT NAIROBI THIS 7 DAY OF NOV 2024

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:

..Ms. Wamuyu.....for the Applicants

...N/A.....for the Respondent

