Honda Motorcycle Kenya Ltd v Gerick Kenya Limited (Miscellaneous Civil Case 325 of 2018) [2021] KEHC 141 (KLR) (Commercial and Tax) (14 October 2021) (Ruling)

Neutral citation: [2021] KEHC 141 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)

COMMERCIAL AND TAX

MISCELLANEOUS CIVIL CASE 325 OF 2018

F TUIYOTT, J

OCTOBER 14, 2021

IN THE MATTER OF: ARBITRATION ACT, 1995 & THE ARBITRATION RULES, 1997

AND

IN THE MATTER OF: RECOGNITION AND ENFORCEMENT OF AN ARBITRAL AWARD

BETWEEN

HONDA MOTORCYCLE KENYA LTD ..... APPLICANT

AND

GERICK KENYA LIMITED ..... RESPONDENT

RULING

1. The application dated 18th July 2018 seeks the following two orders:-

    1. THAT this Honourable Court be pleased to recognize the Arbitral Award dated 22nd June 2018 by Patterson Munene Kamaara, Arbitrator and annexed herewith as a Judgment of this Court and binding on the parties.

    2. THAT this Honourable Court be pleased to grant leave to the Applicant for enforcement of the Arbitral Award dated 22nd June 2018 and annexed herein as a decree of this Court.

2. The Arbitral Award sought to be enforced was the subject of a setting aside motion dated 20th September 2018 in Nairobi Commercial & Admiralty Misc. Civil Case No. E 073 of 2018 Gerick Kenya Limited vs Honda Motorcycle Kenya limited (the setting aside matter). By agreement of counsel here, this matter was, on 8th November 2018, consolidated with the setting aside matter with the latter

being the lead file. Important to the matter at hand is a second limb to the order of consolidation. It read:-

> " HCC Mis. 325/2018 shall abide by the outcome and orders herein."

3. This aspect of the order has never been set aside or varied. And the Court does not accept that proceedings of 3rd November 2020 had the effect of setting aside or varying it.

4. The outcome in the setting aside Motion was that the Court, on 15th October 2019, dismissed it. That is what must bind the result in this matter.

5. Although the respondent now argues that the award filed herein does not comply with section 36(3) of the *Arbitration Act*, it is clear that the award sought to be enforced in these proceedings is the same award that was the subject of the setting aside Motion. Since there is no real dispute as the authenticity of the award, then the Court does not think that this contestation is serious.

6. For reasons that there is no substantive challenge to application before Court, paying homage to the consent of 8th November 2018 and further, because the outcome in the setting aside Motion has not been set aside, varied or stay, I allow the Chamber Summons of 18th July 2018 as prayed.

DATED AND SIGNED THIS 29TH DAY OF SEPTEMBER 2021

F. TUIYOTT

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 14TH DAY OF OCTOBER 2021

A. MABEYA, FCI Arb

JUDGE

PRESENT: