



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

MISC. APPLICATION NO. E561 OF 2020

MOORE STEPHENS JVB.....APPLICANT

-VERSUS-

VIKING HOUSE BEST OF KENYA LIMITED.....RESPONDENT

RULING

1. Before the Court is the chamber summons dated 16th December 2020 by **Moore Stephens JVB** (hereafter the Applicant) seeking that the court be pleased to recognize and/or adopt as a judgment of this court the arbitral award published on the 23rd November, 2020 in favour of the Applicant against **Viking House Best of Kenya Limited** (the Respondent) and; to grant the Applicant leave to enforce the said arbitral award as a decree of this court. The summons is expressed to be brought under Section 59(c) and (d) of the Civil Procedure Act, section 36 of the Arbitration Act and Rules 4 and 5 of the Arbitration Rules, 1997.

2. The grounds on the face of the motion are amplified in the affidavits sworn by **Joy Vipinchandra Bhatt** who describes herself as the Managing Partner of the Applicant. To the effect that the parties herein entered into an engagement agreement for the provision of professional services at a fee; that the Respondent defaulted in making payments and the Applicant instituted proceedings; that the Respondent applied for the dispute between the parties to be determined by way of arbitration pursuant to the engagement agreement between the parties; that an arbitrator was duly appointed by the Chairperson of the Chartered Institute of Arbitrators (Kenya Branch) in accordance with clause 27 of the Engagement Agreement; that the parties were heard and the issues and parties' rights fully determined vide the arbitrator's decision rendered on 23rd November, 2020.

3. The Respondent did not file a response to the instant motion or submissions as directed by the Court. On their part, the Applicant filed submissions which are primarily anchored on sections 32A and 36(1) of the Arbitration Act as to the finality and enforcement of the arbitrator's award. Counsel cited the decision of the High Court in **Independent Electoral and Boundaries Commission v John Omollo Nyakong'o t/a H.R Ganjee & Sons (2021)** in support of his submissions.

4. The factual backdrop of the application is uncontroverted. The parties executed an Engagement Agreement for the provision of services by the Applicant to the Respondent (see annexure **JVB1** to the supplementary affidavit) which contained an arbitration clause. Subsequently a dispute over payment of fees arose and the Applicant instituted proceedings for recovery. The Respondent successfully applied for the dispute to be referred to arbitration. An arbitrator was duly appointed and having heard the parties rendered his determination on 23rd November 2020 (see annexure **JVB 2** to supporting affidavit). The Applicant has now moved the Court to have the decision adopted as a judgment of this Court and leave to enforce the same.

5. Section 32A of the Arbitration Act provides that:

“Effect of award

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. Section 36 of the Arbitration Act further provides for the recognition and enforcement of arbitral awards, upon application to this Court. Based on the uncontroverted material presented by the Applicant and the law, the Court is satisfied that the application dated 16th December 2020 is merited and will grant it with costs to the Applicant.

DELIVERED AND SIGNED ELECTRONICALLY ON THIS 14TH DAY OF OCTOBER, 2021

C. MEOLI

JUDGE

In the presence of:

Mr Kabiru for Applicant

Ms. Nasambu for the Respondent

C/A: Carol