



Lalji Meghi Patel & Company Limited v Kabete Dam Limited (Miscellaneous Application E1128 of 2020) [2021] KEHC 223 (KLR) (Commercial and Tax) (11 November 2021) (Ruling)

Neutral citation: [2021] KEHC 223 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E1128 OF 2020
WA OKWANY, J
NOVEMBER 11, 2021**

BETWEEN

LALJI MEGHI PATEL & COMPANY LIMITED APPLICANT

AND

KABETE DAM LIMITED RESPONDENT

RULING

1. The applicant filed the application dated 8th October 2020 seeking the following orders: -
 1. Spent
 2. The Final Corrected and additional award dated 3rd August 2020 be recognized, adopted and enforced as an order of this court.
 3. Leave be granted to enforce the arbitral award as decree of this court
 4. The costs of this application be provided for
2. The application is supported by the affidavit of Cynthia Sheunda and based on the following grounds; -
 1. The parties submitted their dispute to be heard and determined by the arbitrator pursuant to the reference by the President of the Architectural Association on Kenya on or about 17th June 2019.
 2. The arbitrator accepted the appointment as a sole Arbitrator on or about 24th June 2019.
 3. The parties were heard before the arbitrator and an award made in favour of the applicant on the 18th May 2020.



4. On the 19th June 2020, the applicant sought clarification correction and/or interpretation of the award and on 3rd August 2020 the arbitrator affirmed the final, corrected and Additional award.
 5. The statutory period provided has lapsed whereas the respondent has not taken steps to set aside the arbitral award.
 6. The Arbitral award ought to be recognized, adopted and enforced as an order of this honourable court.
 7. Leave of this court ought to be granted to enforce award as the Decree of this Court.
 8. There is no appeal preferred against the arbitral award and or objection thereof.
3. The respondent did not file a response to the application.
4. The application came up for hearing on 27th October 2021 when the applicant's counsel submitted that the application remains unopposed and that the applicant had complied with Section 36 of the [Arbitration Act](#) and rule 4(1) (3) and (6) as directed by the court in the ruling dated 22nd July 2021.
5. I have considered the application dated 8th October 2020 and the oral submissions by applicant's counsel. The main issue for consideration is whether the applicant is entitled to the orders sought. The legal parameters governing the enforcement and adoption of arbitral awards are stated under Section 36 of the [Arbitration Act](#) which stipulates as follows: -
- “36 An arbitral award, irrespective of the state in which it was made shall be
- (1) 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) (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.
6. In [Samura Engineering Limited vs Don-Wood Co Ltd \[2014\] eKLR](#) the court of held as follows; -
- “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...”
7. I have perused the court file and I note that respondent did not file any response to the instant application or attend court on the hearing date despite proper service with the application and the hearing notice. I find that the application remains unopposed.



8. I have also perused the certified copy of the arbitral Award and a copy of the arbitration agreement. I am satisfied that the applicant has met the conditions set under Section 36 of the *Arbitration Act*.
9. I therefore allow the application dated 8th October 2020 and order that the Arbitral Award herein be recognized and enforced as an order of this court. The costs of the application shall be borne by the Respondent.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT NAIROBI THIS 11TH DAY OF NOVEMBER 2021 IN VIEW OF THE DECLARATION OF MEASURES RESTRICTING COURT OPERATIONS DUE TO COVID-19 PANDEMIC AND IN LIGHT OF THE DIRECTIONS ISSUED BY HIS LORDSHIP, THE CHIEF JUSTICE ON THE 17TH APRIL 2020.

W. A. OKWANY

JUDGE

In the presence of: -

Mr. Kokebe for Osundwa for the Applicant.

No appearance for the Respondent.

Court Assistant: Margaret.

