



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**MISC. CIVIL APPLICATION NO. E122 OF 2018**

**KENYA RAILWAYS STAFF RETIREMENT BENEFITS SCHEME...APPLICANT**

**-VERSUS-**

**MIT'S ELECTRICAL COMPANY LIMITED.....RESPONDENT**

**RULING**

1. The Chamber Summons dated 12<sup>th</sup> October is filed by the Kenya Railway Staff Retirement Benefits Schemes. The applicant seeks by that application the recognition and adoption as a judgment of this court the Final Award of the Arbitrator Phyllis Wangwe, dated 15<sup>th</sup> November 2017 together with the taxed costs. The applicant also seeks an order be made that the sum of Ksh 342,500, being the arbitrators fees be refunded by the respondent, Mits Electrical Company Limited.

2. The replying affidavit in opposition to the application is sworn by Satya Bhama Gandhi. He describes himself as the former Managing Director of the respondent. He deponed that on the passing away of the respondent's chairman, Priya Ghandi, on 6<sup>th</sup> November 2017 the respondent was struck off the register. The deponent also stated that it had not been given notice of the reading of the award and that the arbitrator awarded costs to the applicant contrary to the parties agreement.

**ANALYSIS**

3. What was contained in the respondent's replying affidavit is submissions one would expect to be made in an application to set aside an arbitral award. The arbitrators award, in this matter, was published on 15<sup>th</sup> November 2017. Section 35 (3) of the Arbitration Act provides an arbitral award may be set aside only within 3 months after the arbitrators award is received. That section 35 (3) provides:

***“(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.”***

4. The respondent did not deny that more than 3 months had elapsed since the arbitrators award was received. It follows that the respondent is prevented from challenging the award by provisions of that section.

5. The applicant has moved the court to recognize the arbitrators award. The recognition of arbitration award is under section 36 of the Arbitration Act which provides:

***“(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”.***

6. There are no grounds for setting aside the award, which fall under section 37 presented before the court. It follows that the application for recognition of the award has no impediment. The applicant having succeeded in the application it is entitled to costs.

**CONCLUSION**

7. The court grants the follow orders:

***a. This court does hereby recognize and adopt as judgment of this court the Final Award given by Arbitrator Phyllis Wangwe on 15<sup>th</sup> November 2017 and the Ruling on Taxation of 17<sup>th</sup> September 2018.***

*b. The Respondent shall also pay Ksh342,500 to the Applicant being the Arbitrator's costs.*

*c. The Respondent shall pay to the Applicant the costs of this action.*

DATED and SIGNED at NAIROBI this 4<sup>TH</sup> day of October, 2019.

MARY KASANGO

JUDGE

*Ruling Read in Open Court in the presence of:*

Sophie.....COURT ASSISTANT

.....FOR THE APPLICANT

.....FOR THE RESPONDENT