



**REPUBLIC OF KENYA**

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

**COMMERCIAL AND ADMIRALTY DIVISION**

**MISC APPLICATION NO. 52 OF 2019**

**LI XIN YANG.....APPLICANT**

**VERSUS**

**SURAYA PROPERTY GROUP LIMITED.....RESPONDENT**

**RULING**

1. Before me there are two applications. One seeking an order to set aside the arbitral award of **20<sup>th</sup> December 2018** and the other seeks the court to recognize and adopt that very arbitral award.

**NOTICE OF MOTION DATED 20<sup>TH</sup> MARCH 2019**

2. This **Notice of Motion** is filed by **Suraya Property Group Limited** (herein after Suraya). **Suraya** has sought the following prayers:

*(i) THAT this Honourable Court be pleased to set aside the Arbitral Award of the Arbitrator Mr Paul Ngotho FCI Arb delivered on 20<sup>th</sup> December 2018 in its entirety and be pleased to either:-*

*a. Substitute it with its own decision; or in the alternative;*

*b. Order fresh proceedings on the same subject matter before another arbitral tribunal appointed as per directions of the court.*

3. The grounds **Suraya** gives for the granting of those orders is:

*a. THAT the arbitral Award is in conflict with the public policy of Kenya hence unjust.*

*b. THAT aforesaid award frustrates the contractual intentions of parties, as such the same is against justice and public policy and ought to be set aside.*

*c. THAT the Arbitrator greatly misdirected himself on the evidence produced by the applicant without any legal justification whatsoever.*

*d. THAT despite producing evidence show that the Claimant breached the contract the subject of the arbitral proceedings, the Arbitrator ignored the said evidence and the intention of parties.*

*e. THAT the aforesaid finding was totally against the set rules and evidence thereby occasioning a great injustice to the Applicant.*

*f. THAT by overlooking such set down rules of evidence, sanctity of contracts, intention of parties in a contract, case law and set judicial precedents, the Award as reached by the Arbitrator manifestly offends public policy and ought to be set aside for being manifestly unjust.*

*g. THAT if such blatant deviation from the law and set precedent is allowed to stand then the same would greatly injure public good and offend ordinary reasonable and fully informed members of the public on whose behalf such powers are exercised.*

*h. It is in the interest of justice to set aside the said Award.*

4. Suraya filed an affidavit in support of the application but that affidavit merely repeats the grounds set above. It does not elaborate those grounds. Similarly in Suraya's written submissions those grounds are not expounded at all. One is then left wondering what aspect of the arbitral award was in conflict with public policy; or what aspect of it frustrated contractual intention. Suraya did not either spell out how the arbitrator misdirected himself on the evidence.

5. The application was opposed by Li Xin Yang (herein after Yang). In Yang's view that the arbitral award was meticulously written and was set out with utmost precision a comprehensive background of the dispute.

#### **ANALYSIS OF NOTICE OF MOTION DATED 20<sup>TH</sup> MARCH 2019**

6. The provisions of setting aside arbitral award are found under section 35 of the Arbitration Act. The grounds for refusal to recognize an arbitral award are set out in Section 37 of Arbitration.

7. As stated before Suraya did not attempt to set out the reason why the arbitral award should be set aside other than making bare allegations, as set out above.

8. Arbitral process is a consensus, voluntary procedure through which parties choose to resolve their dispute. The court can only intervene in that process as set out under section 10 of the Arbitration Act. That section provides:

***“Except as provided in this Act, no court shall intervene in matters governed by this Act.”***

9. The Court of Appeal in the case **Nyutu Agrovat Limited v Airtell Network Limited (2015) eKLR** in regard to Limited intervention by the courts of arbitral process stated:

***“The rationale behind the limited intervention of Court in Arbitral proceedings and awards lies in what is referred to as the principle of party autonomy. At the heart of that principle is the proposition that it is for the parties to choose how best to resolve a dispute between them. Where the parties therefore have consciously opted to resolve their dispute through Arbitration, intervention by the Courts in the dispute is the exception rather than the rule...”***

10. Suraya has brought no evidence at all before court which would lead this court to intervene or set aside the arbitral award. The application by Suraya is without merit and will be dismissed with costs.

#### **CHAMBER SUMMONS DATED 11<sup>TH</sup> APRIL 2019**

11. By this application Yang seeks the recognition and adoption of the arbitral award dated **20<sup>th</sup> December 2018**.

12. Although the application was opposed by Suraya, again Suraya in that opposition relied on innuendo and supposition in opposition.

#### **ANALYSIS OF CHAMBER SUMMONS DATED 11<sup>TH</sup> APRIL 2018**

13. There is no concrete or hard facts in opposition to the application. Accordingly the application for recognition of the award is merited and will be granted.

#### **CONCLUSION**

14. In the end and bearing in mind the above discussion I grant the following orders:

***a. This court does hereby recognize and adopt the Final Arbitral Award issued on 20<sup>th</sup> December 2018 as a decree of this court.***

***b. The Notice of Motion dated 20<sup>th</sup> March 2019 is dismissed with costs.***

***c. The costs of the Chamber Summons dated 11<sup>th</sup> April 2019 are awarded to LI Xin Yang.***

**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