



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

MISC. APPLICATION NO. E065 OF 2019

VEHICLE AND EQUIPMENT LEASING LIMITED.....CLAIMANT

VERSUS

SIGNATURE TOURS & TRAVEL LIMITED.....1ST RESPONDENT

KOOME MUNENE.....2ND DEFENDANT

RULING

1. The subject application herein is dated 22nd March 2019. The Applicant is seeking for orders that the final award prepared by Kethi D. Kilonzo dated 18th December 2018 be adopted as the judgment of the Honourable court. It is supported by the grounds thereto and the affidavit sworn by Susan Muthoni the Legal Risk and Compliance officer of the Applicant Company.
2. It is averred in a nutshell that, the Applicant and the Respondent agreed to refer the matter herein to Arbitration and submitted to the jurisdiction of the Arbitral Tribunal. On 18th December 2018, the Tribunal rendered its final decision. That the Respondent has not settled the amounts specified in the award and/or made efforts to settle it. The Applicant is thus desirous in enforcing the award, hence the application.
3. The application was served as per the affidavit of service sworn by Samson M. Wambua dated 23rd September 2019. According to the content of the affidavit, the Respondents were served through the personal assistant of the 2nd Respondent.
4. I have considered the effectiveness of the service and I find that, order 5 of the Civil Procedure Rules is very clear on the modes of service and in particular service upon a limited liability company. If a party however experiences difficult in effecting service, then order 5 of the Civil Procedure Rules provides of a substituted service with the leave of the court. That should have been the case herein.
5. The option resorted to by the Applicant is not supported by the law, in the absence of evidence that the alleged Personal Assistant of the 2nd Respondent had authority to accept the documents served on behalf of the Respondents. Even then, the Applicant relies on the provisions of Section 36 of the Arbitration Act, No. 4 of 1995.
6. I find that, the application for adoption of an award after recognition does not require inter-parties hearing. The documents to be filed are clear under that Section and the factors to consider are clear under Section 37 of the Act. Be that as it were, it is in the interest of justice to notify the Respondent who might have grounds to resist and/or oppose the application.
7. Having opted to serve the application, let proper service be effected and the matter be listed for final orders.
8. It is so ordered.

Dated, delivered and signed in an open court this 7th day of October 2019.

G.L. NZIOKA

JUDGE

In the presence of:

Mr. Mbaabu for Ms. Mugi for the Applicant

Dennis -----Court Assistant