



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

MISCELLANEOUS CAUSE NO. E100 OF 2018

KILELE VENTURES LIMITED.....PLAINTIFF

-VERSUS-

SUSAN WANJIRU MURITU.....DEFENDANT

RULING

1. This Ruling is over the Chamber Summons application dated 3rd October 2018 and the Preliminary Objection dated 3rd December 2018.

BACKGROUND

2. Parties entered into an agreement for the sale of 16 acres, to be excised from L.R. No. 10823/53. The sale agreement had an Arbitration Clause. When a dispute arose it was referred to a Sole Arbitrator, J. B. Havelock. The Sole Arbitrator made his award dated 19th December 2017. By that award **Susan Wanjiru Muritu** (the Respondent) was ordered to refund **Kilele Ventures Ltd.** (the Applicants) non-interest bearing sum of Kshs. 17,160,000 within 30 days of the award. The Respondent was awarded the costs of the Arbitration.

MATTER BEFORE COURT

3. The Applicant has by the Chamber Summons dated 3rd October 2010 sought the following prayers:

- a. The Arbitration Award dated 19th December 2017 issued by Mr. J. B. Havelock, Arbitrator and filed in this Court be adopted and recognized by this Court.*
- b. Leave be granted to the Applicant to enforce the Arbitral Award dated 19th December 2017 as a decree of this Court.*
- c. The Honourable Court orders that the Respondent pays interest on the award sum at the prevailing Court's rate from 19th January 2018 to the date of full settlement.*

4. The application is opposed by the Respondent through the Respondent's Replying Affidavit and through Preliminary Objection filed by the Respondent dated 3rd December 2018.

5. Recognition of enforcement of an award is under Section 36 of the Arbitration Act (the Act). That Section provides that domestic Arbitral Award shall be recognized as binding on an application before Court. That recognition of an award is subject to provisions of Section 37 of the Act. Section 37 sets out the grounds for refusal of recognition or enforcement of an Arbitral Award.

6. The basis of the Respondent's opposition for the recognition by this Court of the Arbitral Award is solely that the Applicant did not pay part of the Arbitrators costs and he should pay those costs before such recognition. According to the Respondent the Applicant having not paid his share of the Arbitrators costs and having not paid the costs as awarded by the Arbitrator the award should not be recognized by the Court. In the case **POWER PUMP TECHNICAL COMPANY LIMITED V COUNTY GOVERNMENT OF KITUI [2018] eKLR** the Court considered the importance of enforcing Arbitral Award and stated:

*“That the enforcement of the Arbitral Award is an all-important public policy in Kenya, as clearly laid out in the case of; **Kenya Shell Ltd vs Kobil Petroleum Limited, Civil Appeal No. 57 of 2006** where the Court underscored the importance of the principle of finality of Arbitral Awards and stated as follows: -*

“The Arbitration Act, which came into operation on 2nd January 1996, and the Rules thereunder, repealed and replaced Chapter 49 Laws of Kenya, and the rules thereunder, which had governed Arbitration matters since 1968. A comparison of the two pieces of legislation underscores an important message introduced by the latter Act: the finality of disputes and a severe limitation of access to Courts.....The message we think, is a pointer to the public policy the country takes at this stage in its development.....At all event, the tribunal was bound to make a decision that did not necessarily sit well with either of the parties. It would nevertheless be a final decision under Section 10 of the Act, unless either party can satisfy that Court that, it ought to be lawfully set aside. In this case, the decision was final. We do not feel compelled therefore to extend the agony of this litigation on account of the issues raised by the Applicant.”

7. Much energy has been expended by the Respondent in submissions that are not relevant to the prayer for recognition. The Respondent in seeking to block the recognition of the award has raised the issue of her unpaid costs and the Applicants failure to share the Arbitrator’s costs. That is admitted by the Applicant, but it does not amount to an illegality recognized by Stature. The other issues that the Applicant is pressuring her to pay the amount does not suffice to prevent recognition of the award.

8. Accordingly the Preliminary Objection raised by the Respondent dated 3rd December 2018 is dismissed.

9. The Applicant by his Chamber Summons, in addition to seeking recognition of the Arbitral Award, also seeks that this Court will order the amount awarded by the Arbitrator do attract interest until payment in full.

10. Parties in entering into the Sale Agreement, which had an Arbitration Clause, consented to their dispute to be subjected Arbitration process. Arbitration is a consensual process. That process the parties consented to is governed by the Act. Section 10 of the Act provides:

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

11. The Applicant in seeking that this Court award him interest on the amount awarded by the Arbitrator is leading the Court to go contrary to Section 10 of the Act. The Arbitrator awarded the application an amount of Kshs. 17,160,000 with no interest accruing on the same. It would be a travesty to the Act for this Court to amend that award to include interest. This was what was stated in the case **KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC) V GREENSTAR SYSTEMS LTD [2018] eKLR** thus:

*“In any event, matters to do with the propriety or otherwise of the Arbitrator awarding a specific sum, or interest or costs are matters over which only the Arbitrator had jurisdiction to deal; and which this Court would have no mandate to interfere. I would therefore concur with the decision in **D. Manji Construction Limited vs. C & R Holdings Limited [2014] eKLR** in which the Court observed that:*

“The Applicant has cited some alleged erroneous decisions by the Arbitrator on matters to do with completion date, double gauge windows, rate of interest awarded, final accounts, disregard of evidence, extension of time, only to mention but a few...those arguments did not really show that the law was violated as they are matters which fall within the fallibility of every person who is exercising judicial or quasi-judicial authority. They also relate to the merits and factual appreciation of the case by the Arbitrator; which again falls squarely on the competence of the Arbitrator as the master of facts...”

12. The issue on whether or not to award interest on the sum awarded was within the competence of the Arbitrator and this Court will steer clear of the same.

CONCLUSION

13. Accordingly the following are the orders of this Court:

a. This Court does hereby recognize as binding the award of Mr. J. B. Havelock dated 19th December 2017.

b. The Preliminary Objection dated 3rd December 2018 is dismissed with costs.

c. There is no costs awarded on the Chamber Summons dated 3rd October 2018.

DATED, SIGNED and DELIVERED at NAIROBI this 5TH day of NOVEMBER, 2019.

MARY KASANGO

JUDGE

Ruling Read and Delivered in Open Court in the presence of:

Sophie..... COURT ASSISTANT

..... FOR THE PLAINTIFF

..... FOR THE DEFENDANT