



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
MISC. APPLICATION NO. 465 OF 2017

D.T. DOBIE & COMPANY (K) LIMITED.....APPLICANT

VERSUS

AUTOGEM TYRE CENTER LIMITED.....RESPONDENT

RULING

1. This Ruling relates to a Chamber Summons Application dated 20th November, 2017 brought under the Provisions of Sections 36(1) of the Arbitration Act No. 4 of 1995 and Rule 6 and 9 of the Arbitration Rules 1997 and all other enabling provisions of Law.

2. The Applicant is seeking for orders:-

(i) That this Honourable Court be pleased to adopt the Arbitral Award delivered on the 19th June 2017 as a judgment of the Honourable Court;

(ii) That the Honourable Court do give the Applicant leave to enforce the said Award as a decree of the Honourable Court.

(iii) That the costs of this Application be payable by the Respondent.

3. The Application is premised on the grounds on the face of it and the supporting Affidavit dated 20th November 2017 sworn by Wilson Musyoka, a Credit Manager of the Applicant's Company and a supplementary Affidavit, he swore dated 7th March, 2017.

4. He averred that in or around September 2011, the parties herein entered into and executed a sub-lease agreement in which the Respondent covenanted to pay certain agreed rental amounts to the Applicant. That it was agreed that any dispute arising from the aforesaid contract would be referred to Arbitration.

6. Thereafter, a dispute arose between the parties and was referred to Arbitration on 16th November 2016 before Mr. Mbiriri Nderitu appointed by the Chairman of the Chartered Institute of Arbitrators (Kenya) Branch to be the Arbitrator.

7. The dispute was duly heard and determined and an Award rendered on the 19th June 2017 and has been filed in this cause. That despite being aware about publication of the Award, the Respondent has neither applied to set it aside or satisfied it. Hence this Application that the Award be adopted by the Honourable Court before any execution can issue.

8. The statutory provisions that govern enforcement of Award are found under Section 36 of the Arbitration Act provides that:-

(1) 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](#).

(2) An international arbitration award shall be recognised as binding and enforced in accordance to the provisions of the New York Convention or any other convention to which Kenya is signatory and relating to arbitral awards.

(3) Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement must furnish

(a) the original arbitral award or a duly certified copy of it; and

(b) the original arbitration agreement or a duly certified copy of it.

(4) 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.

(5) In this section, the expression “New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations General Assembly in New York on the 10th June, 1958, and acceded to by Kenya on the 10th February, 1989, with a reciprocity reservation.

9. I have considered the Application and note that the Applicant has annexed to the filed a supplementary Affidavit dated 7th March 2018 a true copy of the Arbitral Award dated and delivered on 19th June 2017 which they wish to have adopted as a Judgment of Court.

10. The case of; *Structural Construction Company Limited v. International Islamic Relief Organization High Court Nairobi, Miscellaneous Case No. 596 of 2005,* held that a copy of the arbitration agreement annexed to the applicant’s supporting affidavit is acceptable for purposes of enforcement of the award.

11. Generally the Court will ordinarily recognize and enforce an arbitral award unless a party demonstrates that the award is affected by one or more of the prescribed grounds for refusal set out in the Arbitration Act, under Section 37(1) of the Arbitration Act.

12. Rules 6 and 7 of the Arbitrations Rules 1997, provides that if no Application to set aside an Arbitral Award has been made in accordance with provisions of section 35 of the Act, the party filing the Award may apply ex-parte by summons for leave to enforce the Award as a decree.

13. In the instant case, it is deponed that the Award was rendered on 19th June, 2017 and was Application was filed on 20th November 2017, way after the expiry of three months. That renders the Application to be heard ex-parte and in the given circumstances, I am satisfied that the Applicant has made out a case for orders sought and I hereby allow the chamber summons Application herein dated 20th November 2017 in terms of prayer (1), (2) and (3) as prayed.

16. Those are the orders of the Court.

Dated, delivered and signed in an open court this 3rd day of May 2018.

G.L.NZIOKA

JUDGE

In the presence of

Mr. Wandati for the Applicant

No appearance for the Respondent

Lang’atCourt Assistant