



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC NO 601 OF 2015

SAMUEL MUREITHI MURIOKI.....PLAINTIFF/RESPONDENT

VERSUS

MICHAEL NJOROGE GACHUHI.....1ST DEFENDANT/APPLICANT

UNCLE SAM'S GITHURAI LIMITED..... THIRD PARTY/RESPONDENT

MAIKO INVESTMENTS LIMITED.....INTERESTED PARTY

RULING

1. This is the notice of motion dated 12th June 2019 brought under order 46 rule 18, order 50 rule 1 of the Civil Procedure Rules, Sections 1A and 1B, Section 3A of the Civil Procedure Act, Cap 21 of the Laws of Kenya, and all other enabling provisions of the law.

2. It seeks orders:-

(1) Spent.

(2) That this honourable court be pleased to adopt the Arbitrator's Award dated 18th day of March 2019 as judgment of the court.

(3) That cost of the application and the suit herein be awarded to the defendant/applicant herein.

3. The grounds are on the face of the application and are:-

(a) That the Arbitrator delivered and filed here award in court on the 18th day of March 2019 with due notice to the parties.

(b) That the award having been read and availed to the parties on the 18th day of March 2019 no challenge has been filed before this honourable court challenging the same.

(c) That it is in the interest of justice and fairness that the same be adopted as a judgment of the court, to enable this matter be expeditiously concluded.

(d) That no prejudice will be occasioned to any party were the award herein to be adopted as a judgment of the court.

4. The application is supported by the affidavit of Michael Njoroge Gachuhi the defendant/applicant herein sworn on the 12th June 2019 and a further affidavit sworn on the 5th September 2019.

5. The application is opposed. There are a replying affidavits sworn by Samuel Mureithi Murioki the plaintiff/respondent sworn on the 26th June 2019 and on 27th June 2019. There are also grounds of opposition filed on the 27th June 2019.

6. On the 4th July 2019 the court with the consent of the parties directed that application be canvassed by way of written submissions.

7. I have considered the notice of motion and the affidavits in support together with the annexures. I have also considered the grounds of opposition, the replying affidavits and the annexures. I have considered the written submissions made on behalf of the parties, the oral

highlights and the authorities cited. The issue for determination is whether this application is merited.

8. The defendant/applicant seeks to have the Award of the Arbitrator dated 18th March 2019 and filed in court on 18th April 2019 adopted as the judgment of the court. Section 32 of the Arbitration Act provides that:-

“1. An arbitral Award shall be made in writing and shall be signed by the arbitrator on the arbitration.....”

“3. The arbitral award shall state the reasons upon which it is based, unless:-

(a) the parties have agreed that no reasons are to be given; or

(b) the award is an arbitral award on agreed terms under section 31”.

“4. The arbitral award shall state the date of the award and the judicial seat of arbitration as determined in accordance with section 2(i), and the award shall be deemed to have been made at that judicial seat”

“5. Subject to section 32 b after the arbitral award is made, a signed copy shall be delivered to each party”.

9. The final award by the sole Arbitrator has been filed in court. It is not in dispute that at some point the file went missing and had to be reconstructed. The plaintiff/respondent confirms this position in his replying affidavit. The court file was reconstructed following the order issued on 12th April 2019. The plaintiff/respondent appears to raise the issue of bias by the Arbitrator in the conduct of the arbitration process. He however did not raise the issue with Arbitrator while the process was ongoing. He did not raise the issue with this court at all. I find this to be an afterthought. He has not sought to set aside the Award as per the provisions of Section 35(2) and (3) of the Act.

10. I find that the plaintiff/respondent was duly informed of the date of delivery of the Award. I find that the plaintiff/respondent will not be prejudiced in any way if the Award is adopted.

11. In conclusion I find merit in this application and the same is allowed in the following terms:-

(i) That the Arbitrators Award dated 18th March 2019 is hereby adopted as a judgment of the court.

(ii) That costs of this application and the suit be borne by the plaintiff/respondent.

It is so ordered.

Dated, signed and delivered in Nairobi on this 14th day of May 2020.

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L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiff

No appearance for the Defendants

Kajuju - Court Assistant