



**Christian & another v Direct Pay Limited t/a DPO (Miscellaneous Application E008 of 2023) [2024] KEELRC 1325 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELRC 1325 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KAKAMEGA  
MISCELLANEOUS APPLICATION E008 OF 2023**

**JW KELI, J  
MAY 30, 2024**

**BETWEEN**

**ANDOLE MATEKWA CHRISTIAN ..... 1<sup>ST</sup> APPLICANT**

**HINGSTONE IMBWAGA KIDULA ..... 2<sup>ND</sup> APPLICANT**

**AND**

**DIRECT PAY LIMITED T/A DPO ..... RESPONDENT**

*(Application under Section 63(e) of the Civil Procedure Act, Order 26 Rule 1 of the Civil Procedure Rules, Order 46, Rule 13 of the Civil Procedure Rules, Section 36 (1) of the Arbitration Act, 1995 and Rule 9 and 11 of the Arbitration Rules, 1997 seeking for recognition and enforcement of Arbitration Award)*

**RULING**

1. Following the delivery of an arbitration award dated 6<sup>th</sup> November 2023 by the 1<sup>st</sup> Applicant (the arbitrator) in favour of the 2<sup>nd</sup> Applicant, the 1<sup>st</sup> Applicant acting as the advocate for the Applicants (the 1<sup>st</sup> Applicant being the arbitrator and the 2<sup>nd</sup> Applicant the claimant) filed the instant Notice of Motion application dated 19<sup>th</sup> December 2023 and filed on an even date, seeking the following orders:-
  - a. That the Honourable Court be pleased to recognize and adopt the Final Award dated 6<sup>th</sup> November 2023 and delivered by the Hon. Arbitrator, Mr. ANDOLE M. CHRISTIAN as a judgement of this Honourable Court.
  - b. Judgement be entered in favour of the Applicants as against the Respondent jointly and severally in terms of the Final Arbitral Award date 6<sup>th</sup> November 2023 by the Hon. Arbitrator Mr. Andole M. Christian.



- c. The Honourable Court do give the Applicants level to enforce the Arbitral Award dated 6<sup>th</sup> November 2023 totaling to Kenya Shillings 45 604 666 as a decree of this Honourable Court pursuant to the Final Arbitral Award dated 6<sup>th</sup> November 2023.
  - d. The costs of this application be borne by the Respondents.
  - e. Any of the interim relief or orders the Court deems fit.
2. The Application was premised on the grounds on the face of the application and on the grounds set out in the Supporting affidavit sworn by the 1<sup>st</sup> Applicant on 19<sup>th</sup> December 2023 on behalf of the 2<sup>nd</sup> Applicant as follows: -
- i. The Respondent is the largest and fastest-growing African payment gateway offering small and medium-sized businesses the solution, technology, opportunity, and support to make and receive online payments whenever they want.
  - ii. The Respondent has its African headquarters on Avenue 5 Building, Rose Avenue, Kilimani in Nairobi with its international headquarters in Ireland -99 Exchange Place IFSC, Dublin 1.
  - iii. It has branches in Tanzania, Uganda, Zambia, Rwanda, Ethiopia, Zimbabwe, South Africa, Namibia, Botswana, Malawi Mauritius, Ghana, Nigeria, Ivory Coast and DRC Congo and is privileged to serve clients in dynamic sectors such as airlines, hotels, restaurants, e-commerce, schools, insurance, car rental and travel agents across Africa.
  - iv. That a dispute arose between it and the 2<sup>nd</sup> Applicant over monies advanced by agents and or principals of the Respondent and received for purposes of procuring meals for its employees and transportation, which culminated in the unfair summary dismissal /constructive dismissal of the 2<sup>nd</sup> Applicant by the Respondent.
  - v. That the Respondent published malicious defamatory and libelous material about the 2<sup>nd</sup> Applicant to disparage his professional reputation.
  - vi. That the 2<sup>nd</sup> Applicant displeased with his dismissal referred the dispute to the Arbitrator (the 1<sup>st</sup> Applicant), pursuant to an Arbitration Clause(25) contained in his employment contract for the 1<sup>st</sup> Applicant to render a final award based on the documents availed by the Respondent which included the Employment Contract of 9<sup>th</sup> April 2021, Minutes of Disciplinary Hearing of 9<sup>th</sup> October 2023, email termed Explanation letter, termination letter of 27<sup>th</sup> October 2023 and Certificate of Service.
  - vii. That a well-considered arbitral award dated 6<sup>th</sup> November 2023 was issued and two copies dispatched vide Fargo Couriers Limited on 6<sup>th</sup> November 2023 to the Respondent who received it on 7<sup>th</sup> November 2023 awarding the Applicant Kshs. 16,604,666 as fair compensation for reputational loss and unfair termination. The arbitrator further awarded Kshs. 29,000,000 as costs of the arbitration proceedings.
  - viii. That the respondent has refused, neglected to return, and refused to recognize the arbitral award to a greater prejudice to the Applicants.
  - ix. That the actions and omissions of the Respondent are callous and a total demonstration of their willpower to whittle down prerogative powers of agents of law and order and make non-sense the arbitral award and the effort dispensed.
  - x. No prejudice will be suffered by the Respondent if the application is certified urgent.



- xi. That the Respondent is indebted to the Applicants as per the Arbitral award dated 6<sup>th</sup> November 2023.
- xii. That it is in the interest of justice that the Court accedes to the Applicants' request to enable the Respondent to Honour the order of the Final Award to the letter.
- xiii. That the Arbitral award dated 6<sup>th</sup> November 2023 and delivered on 7<sup>th</sup> November 2023 be adopted by this Court for it to be enforced as a decree of the Court.

### **The Respondent's Response**

3. The Respondent filed a Replying affidavit sworn by Martin Gichia on 4<sup>th</sup> March 2023 and received in Court on an even date in response to the Applicants' application.
4. The Deponent was the head of the Legal division of the Respondent and opposed the enforcement and recognition of the arbitration Award by the 1<sup>st</sup> Applicant dated 6<sup>th</sup> November 2023 and sought that the same be set aside in its entirety. The Deponent contended that: -
5. The 1<sup>st</sup> Applicant is not a member of the Chartered Institute of Arbitrators (CI Arb) either of Kenya or the UK Branch and as such he could not hear the dispute and render an award as evidenced by a letter from the CI Arb Nairobi affirming the same (MG-1).
6. That the Award as such is a nullity and cannot therefore be enforced.
7. That as per the Arbitration Clause 25 of the Employment Contract reproduced below, there was no notification of the dispute; there was no engagement with the Respondent in the selection of an Arbitrator; and there was no proper notice on the appointment of the arbitrator or of the arbitral proceedings for the Respondent to present its case.
8. That Respondent only become aware of the arbitration proceedings upon being served with the 1<sup>st</sup> Applicant's award on 7<sup>th</sup> November 2023(MG-2).
9. That Clause 25 of the 2<sup>nd</sup> Applicant's employment Contract was as follows: -

“25. Arbitration

- 25.1. Should any dispute arise between the parties hereto with regard to the interpretation, rights, obligations, and/or implementation of any one or more of the provisions of this agreement, the parties shall in the first instance attempt to resolve such dispute by amicable negotiations and should negotiations fail to achieve a resolution then either party may declare a dispute by written notification to the other, whereupon such dispute shall be referred to arbitration under the following terms:-
  1. Such arbitration shall be resolved under the provisions of the Kenya *Arbitration Act* (Act 4 of 1995) as amended by the Arbitration (Amendment) Act, 2009 (or in accordance to Acts in Kenya in relation to Arbitration as may be enacted or amended from time to time).
  2. The Arbitral tribunal shall consist of one (1) arbitrator to be agreed upon between the parties failing which such Arbitrator shall be appointed by the Chairman of the time being of the Chartered Institute of Arbitrators (Kenya Branch) upon the application of either party.



3. The Place and seat of arbitration shall be in Nairobi. The language used shall be English.
  4. The Award of the arbitral tribunal shall be final and binding upon the parties to the extent permitted by law and any party may apply to a Court of competent jurisdiction for enforcement of such award.
  5. Notwithstanding the above provisions of this clause, a party is entitled to seek preliminary injunctive reliefs or interim or conservatory measures from any Court of competent jurisdiction pending the final decision or award of the Arbitrator.”
26. The Respondent contended that as per Clause 25.1.3. of the arbitration agreement the stated the place and seat of the arbitration was Nairobi, yet it is clear the Award was delivered in Kakamega (MG-2).
  27. That the entire Arbitral proceedings and the resultant Arbitral Award are contrary to public policy as the Respondent having been denied the right to be heard and chance of participation in the proceedings was denied the right to a fair hearing.
  28. That the Arbitral proceedings and resultant award was against public policy, justice and morality, in derogating from the existing contractual provisions agreed upon by the parties.
  29. That the arbitral award was made contrary to the law by purporting to make the arbitrator a collection agent in respect of the award, a position unknown in law.
  30. That the award is against public policy for awarding exorbitant awards without any laid down basis.
  31. That the 1<sup>st</sup> Applicant, the arbitrator, is in clear and apparent conflict of interest in purporting to act as an advocate in the proceedings herein yet he issued the award sought to be enforced.
  32. That it would violate public policy to allow the recognition and enforcement of the award herein issued by a person lacking the capacity and legal mandate to so act, and the arbitration proceedings commenced without complying with the arbitration clause by the parties.

## **WRITTEN SUBMISSIONS**

33. The Court directed that the application be canvassed by way of written submissions. The Applicants' written submissions drawn by Matekwa & Co. Advocates were dated 12<sup>th</sup> April 2024 and filed in Court on the 17<sup>th</sup> April 2024. The Respondent's written submissions drawn by Sonal Raval Advocates were dated 29<sup>th</sup> April 2024 and filed in Court on an even date.

## **DETERMINATION**

### **Issues for determination**

34. The Applicants in their submissions identified the following issues for determination:-
  - i. Whether the Arbitral Award dated 6<sup>th</sup> November 2023 ought to be recognized, adopted, and enforced as a judgment of this Honourable Court.
  - ii. Whether the Arbitral Award dated 6<sup>th</sup> November 2023 should be set aside?
35. The Respondent in its submissions identified the following issue for determination:-
  - a. Whether the arbitration clause in the contract between the parties was complied with.



- b. Whether the respondent was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case.
  - c. Whether the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties.
  - d. Whether the change of venue of the arbitration proceedings invalidates the award.
  - e. Whether the 1<sup>st</sup> applicant had the capacity to hear the dispute and deliver an award.
  - f. Whether the recognition and enforcement of the award would be contrary to the public policy of Kenya.
  - g. Whether the 1<sup>st</sup> Applicant has a conflict of interest by acting as counsel in the proceedings herein.
  - h. Whether the 1<sup>st</sup> Applicant is a proper party to the proceedings herein.
  - i. Whether the respondent's replying affidavit is incurably defective for want of commissioning.
  - j. Whether the applicants are entitled to the orders that they seek.
  - k. Who bears the costs of the application?
36. The Court having perused the application by the Applicants, the Response by the Respondent and considered the Parties' submissions, taking cognizance of the applicable law and especially sections 36 and 37 of the *Arbitration Act*, was of the considered opinion that the issues placed before the Court by the parties for determination in the application were as follows:-
- a. Whether the arbitration award dated 6<sup>th</sup> November 2023 was proper for recognition and enforcement by Court.
  - b. Who bears costs of the Application.

**Whether the arbitration award dated 6<sup>th</sup> November 2023 was proper for recognition and enforcement by the Court.**

37. The applicable law in recognition and enforcement of arbitration awards is as stated under the *Arbitration Act*. Section 36 of the *Arbitration Act* provides for Recognition and enforcement of awards to wit: - '(1) A 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.'" The cause of action in the arbitration leading to the arbitral award was alleged to be unfair termination of employment thus the Court has jurisdiction.
38. Section 37 of the *Arbitration Act* provides for grounds for refusal of recognition and enforcement of arbitration award as follows:- '(1) The recognition or enforcement of an arbitral award, irrespective of the state in which it was made, may be refused only—
- (a) at the request of the party against whom it is invoked, if that party furnishes to the High Court proof that—
    - i. a party to the arbitration agreement was under some incapacity; or
    - ii. the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made;



- iii. the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
  - iv. the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration, or it contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, that part of the arbitral award which contains decisions on matters referred to arbitration may be recognised and enforced; or
  - v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or failing any agreement by the parties, was not in accordance with the law of the state where the arbitration took place; or
  - vi. the arbitral award has not yet become binding on the parties or has been set aside or suspended by a Court of the state in which, or under the law of which, that arbitral award was made; or
  - vii. the making of the arbitral award was induced or affected by fraud, bribery, corruption or undue influence;
- (b) if the High Court finds that—
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or
  - (ii) the recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya.”
39. The Court then proceeds to evaluate the grounds raised by the Respondent against the recognition and enforcement of the award and decide on whether the arbitration award dated 6<sup>th</sup> November 2023 by the Applicant is proper for recognition and enforcement based on material placed before the court by the parties.
40. The said arbitration award was annexed. It was dated 6<sup>th</sup> November 2023. The document said to be the award was titled:-‘ UNfair Labour Practices Contrary To *The Constitution* 2020 & *Employment Act* No.11 OF 2007”
41. In paragraph 1 of the document produced as the award, the arbitrator (1<sup>st</sup> Applicant )explained his appointment as follows: ‘In honor , respect and recognition of clause 25.1.2 of the Parties’ contract of service dated 9<sup>th</sup> April 2021 and with a commencement date of Monday 12<sup>th</sup> April 2021; the parties herein have severally and jointly appointed Andole M. Christian; an advocate of High Court of Kenya, Legal Practitioner, Academician, School Captain of Emeritus Mang’u High School..... as the sole arbitrator in the matter above.’”
42. At page 22 of the said award, the Arbitrator stated that the award was dated at Kakamega on the 6<sup>th</sup> of November 2023. The court finds that though the award was not stated as delivered at Kakamega, it was dated in Kakamega. The Court noted the agreement was clear the place of arbitration, not just the seat which refers to the applicable law, was Nairobi.



43. The Applicants seek for recognition and enforcement of the award and for subsequent adoption as a judgment of the Court under rules 9 and 11 of the Arbitration Rules 1997 and section 36 of the Arbitration Act.
44. The Respondent in opposition of the recognition and enforcement of the award contended that, there was no engagement with the Respondent in the selection of an Arbitrator; and there was no proper notice on the appointment of the arbitrator or of the arbitral proceedings for the respondent to present its case.
45. The arbitration agreement as stated in clause 25 of the letter of employment of the 2<sup>nd</sup> applicant provided for the manner of appointment of the arbitrator as follows:-

“25. Arbitration

25. 1. Should any dispute arise between the parties hereto with regard to the interpretation, rights, obligations, and/or implementation of anyone or more of the provisions of this agreement, the parties shall in the first instance attempt to resolve such dispute by amicable negotiations and should negotiations fail to achieve a resolution then either party may declare a dispute by written notification to the other, whereupon such dispute shall be referred to arbitration under the following terms:-

1. Such arbitration shall be resolved under the provisions of the Kenya Arbitration Act (Act 4 of 1995) as amended by the Arbitration (Amendment) Act, 2009 (or in accordance to Acts in Kenya in relation to Arbitration as may be enacted or amended from time to time).
2. The Arbitral tribunal shall consist of one (1) arbitrator to be agreed upon between the parties failing which such Arbitrator shall be appointed by the Chairman of the time being of the Chartered Institute of Arbitrators (Kenya Branch) upon the application of either party.
3. The Place and seat of arbitration shall be in Nairobi. The language used shall be English.
4. The Award of the arbitral tribunal shall be final and binding upon the parties to the extent permitted by law and any party may apply to a Court of competent jurisdiction for enforcement of such award.
5. Notwithstanding the above provisions of this clause, a party is entitled to seek preliminary injunctive reliefs or interim or conservatory measures from any Court of competent jurisdiction pending the final decision or award of the Arbitrator.”

46. The Applicants did not file a reply to the Replying Affidavit to controvert facts stated by Martin Gichia for the Respondent to the effect that there was no compliance in the arbitration proceedings, with the Parties' Arbitration agreement reflected in clause 25 of the employment contract produced by the Applicants. Specifically, the Respondent stated they were not notified of the dispute being referred to arbitration, consulted on the appointment of arbitrator nor was the sole arbitrator appointed by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch) upon the application of either party. The Respondent produced as “MG1” confirmation that the 1<sup>st</sup> Applicant was not a member of the Chartered Institute of Arbitrators (Kenya Branch) being letter dated 22<sup>nd</sup> February 2024 by Chebett Koske who was the Chief Executive Officer of the institute's Kenya Branch.



47. It is a ground of non –recognition and non- enforcement of arbitration award for failure to comply with the arbitration agreement of the parties in appointment of the arbitrator. The arbitration agreement in the instant case was as captured in clause 25 (supra) of the 2<sup>nd</sup> Applicant’s employment letter. Section 37(v) of the Arbitration Act states as a ground of non-recognition and non-enforcement of arbitration award as follows:- “the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties” The arbitration agreement provided for the manner of appointment of the arbitrator which the court holds was not complied with. The arbitrator did not provide evidence of how he was appointed. In the award, he did not demonstrate compliance of his appointment with the arbitration agreement. The facts by the Respondent of non-compliance were uncontroverted.
48. The arbitration agreement required notification of intention to refer the dispute to arbitration if negotiations fail. It also required that the arbitration was to be conducted by one arbitrator agreed between the parties failing which arbitrator to be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch) upon the application of either party. There was no evidence placed before the court for compliance and statement of facts by the Respondent of non-compliance were not controverted.
49. The Court takes the position that an arbitrator derives their authority to arbitrate from the arbitration agreement and the same must be complied with strictly failing which the arbitration process and award is not recognisable by Court for lack of jurisdiction under section 37(v) of the Arbitration Act. The arbitrator is a third party neutral and can only sit in the dispute by invitation of parties to their dispute as per the arbitration agreement. The Court takes cognisance that arbitration is a private dispute resolution mechanism and an alternative to the default dispute resolution by Court. No one has authority to act as arbitrator in a dispute without compliance with the parties’ arbitration agreement.
50. The 1<sup>st</sup> applicant in the instant case acts for the 2<sup>nd</sup> applicant as his advocate which I find to be a glaring case of conflict of interest having arbitrated the dispute and now seeking to enforce the decision on his own behalf and of the other party, the employee! The 1<sup>st</sup> applicant in submissions submitted his appointment was not challenged. The Court finds that the respondent having not been made aware of the appointment had no opportunity to challenge the appointment and the grounds for the challenge of arbitrator under the Act had not been invoked. The facts stated in the replying affidavit were that the Respondent only became aware of the arbitration on being served with the award on the 7<sup>th</sup> of November 2023. The arbitration process was by then complete. The cited provisions of sections 5 and 14 of the Arbitration Act on challenge of the arbitrator were thus irrelevant in the instant case.
51. The applicants submitted that the prayer for setting aside the award was time barred and relied on section 35 of the Arbitration Act to wit:-“(3) An application for setting aside the arbitral award may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award, or if a request had been made under section 34 from the date on which that request had been disposed of by the arbitral award.” The applicants relied on the decision in Kenya Technical Teachers college v Will Developers & Construction Limited & another (2022)e KLR where Justice Majanja observed that an application brought to set aside an award was time-barred and that the Arbitration Act , 1995 did not grant jurisdiction to the Court to extend the time for filing the application. The applicants further submitted there was no application before Court for setting aside the award. That was true. What was before Court was an application for recognition and enforcement of the award.
52. The Respondent contended that the award was against public policy as well as morality and that the arbitrator was conflicted for acting as the advocate in the enforcement of the award. On this issue the



applicant did not respond but relied on decision in *Christ of all Nations v Apollo Insurance Co. Ltd* C cited in *Mall Developers Limited v Postal Corporation of Kenya* (2014)e KLR at paragraph 13. I checked the decision and found it was by Justice Kamau where the issue of public policy was addressed as follows:- ‘Public policy must have a connotation of national interest. It cannot mean fairness and justice as was submitted by the parties herein as it was only the Claimant and the Respondent who were individuals entitled who were to be affected by the decision of the Arbitrator. They did not both demonstrate to this Court how the decision by the Arbitrator would negatively affect, impact or infringe the rights of third parties and thus offend public policy. The Claimant submitted that the colossal sum it was claiming would bring the decision by the Arbitrator within the ambit of public policy. On its part, the Respondent argued that the participation of the said Newton Omondi Osiemo as regards the awarding of the contract was against public policy. The Court will consider these arguments in view of the fact that under Section 35 (2)(b) (ii) of the *Arbitration Act*, an award that is in conflict with public policy is a ground for setting aside an Arbitral Award. The fact that there was a colossal amount of money as the Claimant contended or that the subject contract ought to have been nullified as the Newton Omondi Osiemo did not disclose his interest during the awarding of the contract as was alleged by the Respondent were not matters that would have fallen within the domain of what would be considered to have been contrary to public policy as has been envisaged in the *Arbitration Act*. From the evidence that was placed before the Court, the Claimant did not demonstrate that the Arbitral Award was inconsistent with *the Constitution* or other laws of Kenya, or inimical to the national interest of Kenya or contrary to justice and morality. Their arguments did not reveal that there was a violation of public policy herein. The importance of finality of arbitral awards was addressed in the case *Christ for All Nations vs Apollo Insurance Co Ltd* [ 2002] 2 E.A. 366, where Ringera J (as he then was) stated thus:-

“...the public policy in Kenya leans towards finality of arbitral awards and parties to an arbitration must learn to accept an award, warts and all, subject only to the right of challenge within the narrow confines of Section 35 of the *Arbitration Act*.”

Accordingly, the Claimant’s and the Respondent’s arguments were not relevant or cogent at all to persuade the Court to set aside the Arbitrator’s decision or the Claimant’s application on the grounds of the decision or proceedings by the Arbitrator were in conflict with public policy.”

53. The Court finds there was no application before it to set aside the award on ground of public policy. The Court finds that this was not an issue for determination in the application.
54. The Court found the initiation of the arbitration process was not in accordance with the arbitration agreement between the parties. Specifically, the failure to start at negotiations, failure to notify of intention to proceed to arbitration, failure to invite the respondent to participate in appointment of the arbitrator failing which the Chairman of the Kenya Branch Institute of Arbitrators to appoint a sole arbitrator on application by either party. The Court finds that the failure to comply with the process stated in the arbitration agreement between the Respondent and the 2<sup>nd</sup> Applicant under clause 25 of the employment contract rendered the award by Mr. Andole a nullity. The Court upholds a similar holding by the Supreme Court in *Dhanja Investments Limited v Kenindia Assurance Company Limited* (2018)e KLR where for failure to invite the respondent to participate in the arbitration process and in the appointment of an arbitrator the Court determined the arbitration process was a nullity.
55. In this case the Court finds and holds that Mr. Andole M. Christian was not appointed as arbitrator in the dispute between the 2<sup>nd</sup> applicant and the Respondent in compliance with the provisions of clause 25 of the contract of employment of the 2<sup>nd</sup> applicant setting out the arbitration agreement. The Court



holds that the arbitrator imposed himself as an arbitrator in the dispute and his purported award was without authority rendering the entire arbitration process add award a nullity.

56. The Respondent contended that it was not given opportunity to be heard . The Court holds that was undisputed fact. The Court perused the purported award and found no evidence of directions to serve the respondent with the claim for response and no mention of failure to respond on service. The Court finds that the act of the arbitrator, Mr. Andole, was an act of impunity and injustice to the Respondent. The Court found exaggerated award of costs to the arbitrator assessed at Kenya shillings TwentyNine Million for an employee whose basic salary was Kshs. 20,000/- and that to the mind of the court explains why Mr. Andole was the 1<sup>st</sup> Applicant to enforce the award!
57. In conclusion, I have determined that the arbitration process was fatally flawed and the subsequent award dated 6<sup>th</sup> November 2023 was a nullity and incapable of recognition and enforcement under the Laws of Kenya. I consequently, hereby dismiss the application dated 19<sup>th</sup> December 2023.
58. It is a principle of law that costs follow the event. As an arbitrator, the 1<sup>st</sup> applicant ought to have known and been educated about the arbitration process. There was no evidence of his appointment by either party. By these unlawful acts, the 1<sup>st</sup> Applicant has caused a miscarriage of justice to the parties and a wastage of judicial time. I award the Respondent costs of the application payable by the 1<sup>st</sup> Applicant.
59. It so ordered

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30<sup>TH</sup> MAY 2024.**

**J.W. KELI,**

**JUDGE.**

In the presence of

Court Assistant: Sheila

Applicants: Mr. Andole

Respondent: Ms. Ngatia

