



Kenya Medical Supplies Authority v Universal Corporation Limited; National Treasury and Economic Planning & another (Intended Interested Party) (Miscellaneous Application E399 of 2024) [2025] KEHC 13403 (KLR) (Commercial and Tax) (26 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E399 OF 2024
FG MUGAMBI, J
SEPTEMBER 26, 2025**

BETWEEN

KENYA MEDICAL SUPPLIES AUTHORITY APPLICANT

AND

UNIVERSAL CORPORATION LIMITED RESPONDENT

AND

THE NATIONAL TREASURY AND ECONOMIC PLANNING INTENDED INTERESTED PARTY

HON ATTORNEY GENERAL INTENDED INTERESTED PARTY

RULING

1. For determination is the application dated 13th June 2025 filed by the Kenya Medical Supplies Authority (KEMSA). Prayers 1 to 4 of the application have since been spent. The surviving issues for determination are fourfold:
 - i. Whether the 1st and 2nd intended necessary parties should be joined in these proceedings;
 - ii. Whether an order should issue compelling the National Treasury (NT) to settle the decretal sum arising from the arbitral award, to Universal Corporation Limited (UCL);
 - iii. Whether an order should issue discharging KEMSA from liability in respect of the decretal amount arising from the arbitral award and
 - iv. Whether the NT should indemnify KEMSA against all losses and costs incurred in the proceedings.



2. The application is opposed. UCL filed a replying affidavit sworn by its Managing Director on 22nd July 2025. The 1st and 2nd intended necessary parties lodged grounds of opposition dated 14th July 2025. In addition, UCL raised a Notice of Preliminary Objection dated 18th June 2025, which I shall proceed to determine in priority.
3. UCL's objection is anchored on Section 10 of the [Arbitration Act](#), which prohibits court intervention in arbitral matters except as specifically provided by the Act.
4. UCL contends that the provisions of the [Civil Procedure Act](#) invoked by KEMSA, namely Sections 34, 79, 89, and 94, are inapplicable. Section 79 applies only where no special procedure is provided, yet Sections 35 and 39 of the [Arbitration Act](#) prescribe specific procedures for setting aside and appealing arbitral awards. Section 94, which permits execution before taxation of costs, is restricted to this Court's original civil jurisdiction and cannot apply where arbitral awards have been adopted as judgments.
5. UCL further asserts that the final award of 16th October 2023 and the award on costs of 9th February 2024 were recognized and enforced by this Court on 17th April 2025 under Section 36 of the [Arbitration Act](#). Consequently, they are binding on the parties as judgments of this Court, leaving no room for variation.
6. It is also submitted that recourse against an arbitral award lies strictly in an application to set aside under Section 35, which must be filed within three months of delivery of the award. Sections 35, 36, and 37 of the Act set out exhaustively the circumstances under which the Court may intervene, namely, setting aside, recognition, or enforcement. There is no provision empowering the Court to review, vary, or redistribute liability under an award that has already been recognized.
7. UCL therefore argues that this Court is functus officio in relation to the substance of the awards. Further, it submits that the application offends the doctrines of party autonomy and privity of contract. By seeking to impose obligations on the 1st and 2nd intended parties, who were never privy to the contract or the arbitration agreement, KEMSA invites the Court to reopen issues conclusively determined by a tribunal that is functus officio.
8. Finally, UCL contends that reliance on Section 21(4) of the [Government Proceedings Act](#) is misplaced. KEMSA, established under Section 3 of the [Kenya Medical Supplies Authority Act](#), is a body corporate with full legal capacity to contract, sue, and be sued. It cannot therefore invoke provisions that shield Government ministries and departments from execution.
9. In response to the objections, KEMSA argues that the issues raised, particularly those relating to privity of contract, party autonomy, and functus officio are disputed matters of fact requiring full ventilation and cannot properly be raised as a preliminary objection.

Analysis and Determination

10. At this instance the issue for determination is whether the preliminary objection meets the threshold in *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd*, [1969] EA 696, as affirmed by the Supreme Court in *Hassan Ali Joho & Another V Suleiman Said Shahbal & 2 Others*, [2014] eKLR. These decisions emphasize that a valid preliminary objection must raise a pure point of law which, if successful, is capable of disposing of the matter in limine.
11. Having considered the notice of preliminary objection raised by CUE, I am of the view that the same is properly before this Court as it is primarily based on the question of jurisdiction under the [Arbitration Act](#), which is a pure point of law.



12. The question whether this Court has power to entertain the present application is not dependent on contested facts but on the construction of statutory provisions, namely Sections 10, 35, 36 and 37 of the Act. As the Court of Appeal stated in *Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd* [1989] KLR 1, jurisdiction is everything and without it the Court must down its tools.
13. Similarly, in *Hassan Ali Joho & Another V Suleiman Said Shahbal & 2 Others*, [2014] eKLR, the Supreme Court underscored that objections raising jurisdictional questions fall squarely within the ambit of a preliminary objection as articulated in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd*, [1969] EA 696. This Court is therefore properly seized of the objection, since if it succeeds, it is capable of disposing of the entire application without the need to examine any disputed factual issues.
14. The decree sought to be executed stems from an arbitral award that was subsequently adopted as an order of this Court pursuant to Section 36 of the *Arbitration Act*. Section 10 of the Act explicitly provides that no court shall intervene in arbitration matters except as provided under the Act. The permissible interventions are exhaustively set out in Sections 12, 17, 18, 35, 36, and 37.
15. Once an award has been recognized, the Court’s jurisdiction is confined to execution of the decree. That is not contested. What is in contest is whether this Court can exercise its jurisdiction to grant the prayers sought, in the name of execution proceedings.
16. As held in *Christ for All Nations V Apollo Insurance Co Ltd*, [2002] 2 EA 366, once the statutory conditions for recognition are met, the Court is bound to enforce the award as rendered, subject only to the narrow exceptions provided in the Act. This principle goes to the finality of arbitration, which is at the heart of arbitral jurisprudence.
17. The Court of Appeal in *Kenya Oil Company Limited & Another V Kenya Pipeline Company*, [2014] KECA 851 emphasized the need for courts to resist attempts to reopen or dress up factual disputes as legal challenges to arbitral awards. The Court cited with approval the obiter in the case of *Geogas S. A V Trammo Gas Ltd (The “Balears”)* as follows:

“Lord Justice Steyn went on to emphasize the need for the court to be constantly vigilant to ensure that attempts to question or qualify the arbitrator’s finding of fact, or to dress up questions of fact as questions of law, are carefully identified and firmly discouraged.”
18. I am also guided by the Court of Appeal’s finding in *Bomas of Kenya Limited V Standard Investment Bank Limited*, [2023] KECA 544 (KLR) that:

“The enforcement of an arbitral award is a streamlined procedure that is supposed to be completed in a short period of time. This is because all the parties’ rights, obligations, claims, and defenses are deemed to have been evaluated and unequivocally resolved by the arbitral tribunal in a final award.”
19. Likewise, in *China National Aero-Technology International Engineering Corporation V Dazzler Properties Limited*, [2023] KEHC 17833, the High Court reaffirmed that once a final arbitral award is made, it is binding on the parties, and any intervention must strictly fall within the confines of the Act.



20. Section 32A of the [Arbitration Act](#) reinforces this principle and states as follows:

“Except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it, and no recourse is available against the award otherwise than in the manner provided by this Act.”

21. Against this background, the attempt to join new parties at the execution stage of an award is legally untenable. The intended parties were not privy to the arbitration agreement, nor did they participate in the proceedings. To enjoin them now would be tantamount to amending the award, which this Court has no jurisdiction to do. Arbitration is a consensual process founded on party autonomy. As the Court of Appeal held in *Kenya Shell Ltd V Kobil Petroleum, Ltd* [2006] eKLR, arbitration cannot be extended to bind non-parties.
22. The argument by KEMSA that joinder is permissible under the [Civil Procedure Act](#) even at this point is, in my view, misplaced. The issues of liability and indemnity were matters for the arbitral tribunal to determine. If KEMSA believed that liability lay elsewhere, whether under the [Government Proceedings Act](#) or otherwise, those arguments ought to have been raised and determined before the tribunal. They cannot now be smuggled in through the back door of joinder. To even condone such an application would be tantamount to this Court reopening the award for further scrutiny on these contested issues.
23. Equally, KEMSA’s prayer to compel the NT to settle the decretal sum and indemnify it is unsustainable. Section 21(4) of the [Government Proceedings Act](#) applies to judgments against Government ministries and departments, not state corporations. KEMSA, which is established as a statutory corporation under Section 3 of its founding Act, enjoys a distinct legal personality and is liable for its contractual obligations. The award binds KEMSA, not the Treasury.
24. This finding is supported by judicial decisions including *In Ikon Prints Media Company Limited V Kenya National Highways Authority & 2 Others*, [2015] eKLR and *Greenstar Systems Limited V Kenyatta International Convention Centre (KICC) & 2 others* [2018] KEHC 2360 (KLR).
25. Having participated fully in the arbitral process and with the award duly recognized, KEMSA cannot now seek to be discharged from liability or be indemnified by a non-party. To grant such orders would amount to qualifying and rewriting the award, which as I have already stated, this Court has no jurisdiction to do.

Disposition and Final Orders

26. In light of the foregoing, the Preliminary Objection is upheld. Accordingly, the application dated 13th June 2025 is hereby struck out with costs to UCL and the 1st and 2nd intended necessary parties.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER 2025.

F. MUGAMBI

JUDGE

