



**Riro v Kahonge & 4 others (Miscellaneous Application E053 & E062 of 2024 (Consolidated))  
[2025] KEHC 13503 (KLR) (Commercial and Tax) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13503 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS APPLICATION E053 & E062 OF 2024 (CONSOLIDATED)  
FG MUGAMBI, J  
SEPTEMBER 26, 2025**

**BETWEEN**

**DR SOLOMON MATIKO RIRO ..... CLAIMANT**

**AND**

**PATRICK KAHUGI KAHONGE ..... 1<sup>ST</sup> RESPONDENT**

**FABIAN KIMIRI MWAURA ..... 2<sup>ND</sup> RESPONDENT**

**LUCY MELANY WANJIRU ..... 3<sup>RD</sup> RESPONDENT**

**KAHONGE SAMSON ..... 4<sup>TH</sup> RESPONDENT**

**ALEXANDER MWICHIGI ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

**Introduction and Background**

**Application Seeking to Set Aside the Award:**

1. This Court is called upon to determine the Motion dated 7<sup>th</sup> August 2024 by which the applicants seek to set aside the arbitral award dated 29<sup>th</sup> June 2024 issued by Dr. Francis Kariuki, the sole arbitrator (hereinafter ‘the Award’).
2. The application is anchored on the affidavit of Patrick Kahugi Kahonge, sworn on the same date on behalf of the applicants. In summary, the applicants are dissatisfied with the award on several grounds. They argue that the arbitrator misconstrued the governing contract(s) between the parties and adopted an interpretation that unjustly favored the respondent. They further contend that the award offends public policy, in that it directed them to refund the entire purchase deposit despite overwhelming



evidence that such monies had already been expended or properly applied toward subdivision of the mother title.

3. They contend that the award is also oppressive, contrary to the principles of contract law, and unjustly enriches the respondent notwithstanding his own breach of the agreement. They complain that the arbitrator failed to adequately consider the evidence presented, disregarded the principle of equality of parties, and erred in directing a refund of the purchase deposit. In their view, this finding overlooked the crucial fact that the respondent himself sought termination of the agreement even though the applicants remained ready, willing, and able to complete the transaction.
4. The application is opposed by way of Grounds of Opposition dated 6<sup>th</sup> September 2024. The respondent argues that the Motion is incurably defective as it offends the provisions of the [Arbitration Act](#). The respondent contends that in substance, the said application amounts to an appeal against the arbitral award, an avenue neither envisaged nor permitted under the Act.
5. The respondent further maintains that the applicants' reliance on "public policy" is misplaced, since the grounds advanced do not implicate public policy but instead challenge the merits of the arbitral findings. Finally, it is urged that allowing the application would cause grave prejudice by depriving the respondent of the benefits of the award.

### **Analysis and Determination**

6. The parties filed their respective skeleton submissions, which I have carefully considered together with the application and the response. The central issue for determination is whether the applicants have satisfied the threshold for setting aside the arbitral award.
7. The application is predicated upon Section 35(2)(b)(ii) of the [Arbitration Act](#) and Rule 7 of the [Arbitration Rules](#). It is, however, imperative to underscore that the jurisdiction of this Court in arbitration-related matters is deliberately limited. Section 10 of the [Arbitration Act](#) expressly provides that:

“Except as provided in this [Act](#), no court shall intervene in matters governed by this [Act](#).”
8. This restriction is anchored in the doctrine of party autonomy and the finality of arbitral proceedings. The Supreme Court, in [Synergy Industrial Credit Limited v Cape Holdings Limited](#), [2019] eKLR, emphasized that once parties opt for arbitration, the arbitral tribunal becomes the primary forum for determination of their dispute. The Court further observed that while Section 35 allows limited judicial oversight to prevent manifest injustice, it cannot be used as a disguised avenue of appeal.
9. The Court of Appeal in [Mahan Limited v Villa Care Limited](#), [2019] eKLR reaffirmed this position, warning that Section 35 should not be converted into a backdoor appeal mechanism. The Court cautioned that mere dissatisfaction with an arbitral award does not, in itself, warrant intervention. Parties who elect to arbitrate must abide by the outcome unless the narrow statutory grounds for setting aside are strictly demonstrated.
10. Guided by these principles, I now turn to examine the specific grounds relied upon by the applicants. They assert that the award is contrary to public policy, that the arbitrator misinterpreted the contract, failed to consider the evidence presented, and rendered a decision that unjustly enriches the respondent. Upon close scrutiny, however, these complaints largely amount to an attack on the merits of the arbitral tribunal's findings. They are framed as errors of law and fact, matters falling squarely within the province of an appeal, which is neither contemplated nor permitted under Section 35.



11. On the allegation that the award offends public policy, the applicants have not demonstrated how the decision undermines Kenya’s legal order, the administration of justice, or the national interest. The jurisprudence is clear that “public policy” must be interpreted narrowly to cover only awards that are fundamentally inimical to the justice system. Mere hardship, perceived unfairness, or disagreement with the outcome does not suffice.
12. In the result, I am not persuaded that the applicants have established any of the statutory grounds under Section 35 of the Arbitration Act to warrant setting aside the award. The application is therefore devoid of merit.

#### **Application Seeking Recognition of the Award:**

13. Having made the foregoing finding, I now turn to the application dated 6<sup>th</sup> September 2024 in Misc. Application No. E062 of 2024, by which the applicant seeks recognition and adoption of the arbitral award. The application is supported by the affidavit of Dr. Solomon Matiko Riro, sworn on the same date. It is opposed through a replying affidavit sworn on 5<sup>th</sup> May 2025 by Patrick Kahugi Kahonge on behalf of the respondents.
14. On perusal of the replying affidavit, I observe that the objections raised mirror the very issues that I have already addressed and determined in the application to set aside the award. I have already made findings on those arguments and need not revisit them in detail here.
15. That said, the recognition and enforcement of arbitral awards is governed by Section 36 of the Arbitration Act, which provides that an arbitral award shall be recognized as binding and enforceable upon application to the High Court, subject only to the grounds of refusal set out under Section 37. Section 36(3) specifically requires that a party seeking recognition furnish:
  - a. the duly authenticated original award or a duly certified copy thereof; and
  - b. the original arbitration agreement or a duly certified copy thereof.
16. In the present case, I am satisfied that these mandatory requirements have been met. Further, the respondents have not demonstrated any of the limited statutory grounds under Section 37 that would justify refusal of recognition.

#### **Disposition and Final Orders**

17. Accordingly, I make the following orders;
  - i. The application dated 7<sup>th</sup> August 2024 seeking to set aside the arbitral award is dismissed with costs;
  - ii. The application dated 6<sup>th</sup> September 2024 succeeds with the consequence that the arbitral award dated 29<sup>th</sup> June 2024 is hereby recognized and adopted as a judgment of this Court in terms of Section 36 of the Arbitration Act. The award shall be enforceable as a decree of this Court. The respondents shall bear the costs of this application.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**F. MUGAMBI**

**JUDGE**

