



Straight Security Services Limited v Postal Corporation of Kenya (Commercial Arbitration Cause E013 of 2025) [2025] KEHC 14445 (KLR) (Commercial and Tax) (14 October 2025) (Ruling)

Neutral citation: [2025] KEHC 14445 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL ARBITRATION CAUSE E013 OF 2025**

FR OLEL, J

OCTOBER 14, 2025

BETWEEN

STRAIGHT SECURITY SERVICES LIMITED APPLICANT

AND

POSTAL CORPORATION OF KENYA RESPONDENT

RULING

A. Introduction.

1. Before this court for determination is the chamber summons application dated 15.21.2025, file under provisions of Section 36 of the *Arbitration Act*, Rules 4 and 5 of the Arbitration Rules 1997, Sections 59 of the *Civil procedure Act*, and Order 46 of the Civil Procedure rules. The applicant, seeks for orders that this court be pleased to adopt the two award's issued by the arbitrator dated 2nd October 2024 and award on costs dated 11th February 2025 as judgment/decree of this court, and further that leave be granted to the applicant to execute the said judgment.
2. The application is supported by the grounds stated on the face of the said application and the supporting affidavit of Francis Mwenda Munene, the Applicants Managing Director, who depones that the parties herein entered into a security services contract agreement dated 20th April 2021, which at clause 21 provided that any dispute arising therefrom would be referred for resolution through arbitration.
3. The applicant had provided security services at various respondent's premises for which they had failed to pay despite constant reminders. This dispute was referred for Arbitration and after hearing the arbitrator Mr Patterson Munene Kamara published his award dated 2nd October 2024, wherein he awarded the applicant a sum of Kshs.7,027,377/= , plus interest thereon at the rate of 14% P.A from January 2023 until payment in full, claimants party to party costs and the arbitrators costs and expenses



of Kshs.243,600/= and interest thereon at 14% P.A from 2nd November 2024 until payment of the same in full.

4. Subsequently, the party to party costs too, were assessed at Kshs.437,950/=, and the arbitrator's costs for the said session also assessed at Kshs.16,800/= totaling to Kshs.452,950/=. It was the applicant's further contention that this award had been served upon the respondents, and was never challenged or disputed. It was therefore just and proper to have the same recognized and adopted.

B. The Response

5. This application was opposed by the respondent through the replying affidavit of one Jane Masara, their assistant Manager, Legal, who acknowledged that clause 21.0 of the general security services contract provided for arbitration in the event a dispute arose regarding the implementation of the said contract, and that indeed on 12th January 2024, the claimant/applicant had written to them proposing three names for appointment as the sole arbitrator and requested for their concurrence within 7 days.
6. They had not responded to the said letter within the stipulated time as the method of appointment proposed had not strictly adhered to the terms of clause 21.0 of the contract, which required mutual agreement in the appointment of the sole arbitrator. Despite of the lack of consensus, the applicant had proceeded to unilaterally appoint Mr. Petterson Munene Kamara as the sole arbitrator as evidence by their board resolution dated 24th January 2024 and subsequent notification to the respondent.
7. The respondent further averred that upon receiving the said notification, they did formally object against the said appointment through their advocates letter dated 15th April, 2024 and concluded that the arbitral proceedings that followed were fundamentally flawed from its inception due to non-compliance with the agreed procedure for the appointment of the arbitrator. They had subsequently opted not to participate in the said arbitration proceedings and maintained that the said proceedings and the award flowing therefrom was null and void abinito due to the tribunals lack of jurisdiction.
8. Be that as it may, the respondent also pointed out to the court that they had made a partial payment to the applicant of Kshs.407,805.52 on 28th February 2024 as part of the efforts to devise a payment plan for the outstanding dues. This had been done on a without prejudice bases and did not validated the improperly conducted arbitral process. They thus urged the court to dismiss the chamber summons under consideration.

C. The Applicants further Affidavit

9. The applicant did file their further affidavit dated 02.07.2025, where they annexed correspondences exchanged, regarding the appointment of the sole arbitrator and subsequently after his appointment further correspondents exchanged inviting the respondent to the preliminary meeting. It was at this stage that they did write to the arbitrator stating that they were opposed to his appointment and would not participate in the said process.
10. It was the applicant's contention that correspondences exchanged did confirm that the respondent were aware of the arbitral process but had opted not to participate in the same nor did they apply to set aside the final award issued. They were therefore time barred and could not object late in day to stop the adopting of the said award.
11. The applicant therefore urged the court to find that the application under consideration had merit and be pleased to allow the same with costs.



D. Analysis & Determination

12. I have carefully considered chamber summons Application, the affidavits made in support and in opposition thereto, and the respective submissions filed by the parties. The issues that arise are;
 - i. whether the sole Arbitrator was procedurally Appointed.
 - ii. Whether the Arbitral award dated 2nd October, 2024 and the award on costs dated 11th February 2025 should be set aside and/or adopted as prayed for by either party.
 - iii. Who should bear the costs of this Application.

i. Whether the sole Arbitrator was procedurally Appointed

10. The general security services contract dated 20.04.2021 provided at clause 21.0 that all disputes and differences or question that may arise relating to implementation of the said contract would be referred to and for determination by a sole arbitrator appointed jointly by the parties or that in the event the parties could not agree upon a single arbitrator, they would each appoint their own arbitrator and the third arbitrator would be appointed by the two arbitrators so appointed by the said parties.
11. The undisputed facts are that the claimant did propose three names and requested the respondent to approve one of the said persons to arbitrate over their dispute, but the respondent failed to do so. The claimant thereafter proceeded to nominate Mr Peter Kamara Advocate/Arbitrator to handle this dispute and his appointment was later opposed by the respondent who indicated so vide their letter dated 15.04.2024.
12. Section 14 of the *Arbitration Act*, Cap 49 does provide for the procedure of appointment of an arbitrator. The first port of call is for the party opposed to the said arbitrator's appointment to formally write in protest to the said appointment, after which the arbitral tribunal shall decide on the challenge. If unsuccessful, the challenging party shall still be entitled to move to the high court within 30 days to appeal against the arbitrators ruling, if they so wish.
13. In this matter, the respondent failed to follow up on their challenge to the appointment of the arbitrator and opted to boycott the proceedings, which to my mind was fatal to their case. They cannot be then heard at this stage to cry foul over the arbitrator's appointment, having let go of the proper opportunity to follow through on their challenge at the arbitral proceedings and thereafter at the high court if they deemed fit.

(ii) Whether the Arbitral award dated 2nd October, 2024 and the award on costs dated 11th February 2025 should be set aside and/or adopted as prayed for by either party.

10. The respondent further sought to set aside the arbitral award on the grounds already determined above. It goes without saying that their challenge on the appointment of the arbitrator having been dismissed they cannot succeed on this ground. Secondly under Section 35 (3) of the *Arbitration Act*, Cap 49 any application to set aside the arbitral award, should be made within 3 months from the date of receipt of the award. In this instance no application seeking to set aside the said award has been filed within the stipulated time. See *Home Afrika Communités Limited V Josphat Njoroge Mwangi* (2020) Eklr , *Ann Mumbi Hinga v Victoria Njoka Gathara Nairobi CA Civil Appeal No 8 of 2009* (2009) Eklr, & *Ezra Odondi opar v Insurance Company of East Africa Ltd KSC CA Civil Appeal No 98 of 2016* (2020) Eklr.



E. Conclusion and Disposition

10. Consequently, the claimant's application dated 15th February 2025 is allowed on terms that the award dated 2nd October 2024, together with the award on costs dated 11th February 2025, be and is hereby recognised as binding and leave be and is hereby granted to the Claimant/Applicant to enforce it as a decree of this court.
11. The applicant will be given credit for the sum of Kshs.407,805.52/= paid to them 28th February 2024.
12. The Costs of this applications will be borne by the Respondent and is assessed at Kshs.35,000/= all inclusive.
13. It is so ordered.

READ, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 14TH DAY OF OCTOBER, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 14TH DAY OF OCTOBER, 2025.

In the presence of: -

N/AApplicant

Mr. BosireRespondent

Mr. JarsoCourt Assistant

