



**Afraha Flour Mills Limited & 24 others v Ministry of Agriculture, Livestock
and Fisheries & another (Commercial Arbitration Cause E073 of 2024)
[2025] KEHC 14758 (KLR) (Commercial and Tax) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14758 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL ARBITRATION CAUSE E073 OF 2024**

**PM MULWA, J
OCTOBER 16, 2025**

BETWEEN

AFRAHA FLOUR MILLS LIMITED	1ST APPLICANT
ALPHA GRAIN MILLERS LIMITED	2ND APPLICANT
BELLAMY MILLING COMPANY LIMITED	3RD APPLICANT
BUFFALO MILLERS LIMITED	4TH APPLICANT
CAPWELL INDUSTRIES LIMITED	5TH APPLICANT
EASTERN FLOUR MILLS LIMITED	6TH APPLICANT
ELDOROT GRAINS LIMITED	7TH APPLICANT
ISINYA INVESTMENTS LIMITED	8TH APPLICANT
JAHAZI MILLERS LIMITED	9TH APPLICANT
KARIBU FLOUR MILLS LIMITED	10TH APPLICANT
KENSALRISE LIMITED	11TH APPLICANT
KITALE INDUSTRIES LIMITED	12TH APPLICANT
KITUI FLOUR MILLS LIMITED	13TH APPLICANT
LUKENYA FLOUR MILLS LIMITED	14TH APPLICANT
MAMA MILLERS LIMITED	15TH APPLICANT
MAX GRAINS LIMITED	16TH APPLICANT
MOMBASA MAIZE MILLERS LIMITED	17TH APPLICANT



MOMBASA MAIZE MILLERS (KSM) LIMITED	18 TH APPLICANT
MOMBASA MAIZE MILLERS (NRB) LIMITED	19 TH APPLICANT
PEMBE FLOUR MILLS LIMITED	20 TH APPLICANT
TRIDENT MILLERS LIMITED	21 ST APPLICANT
UNGA LIMITED	22 ND APPLICANT
UNITED MILLERS LIMITED	23 RD APPLICANT
USTAWI GRAIN MILLERS LIMITED	24 TH APPLICANT
WAKULIMA FLOUR MILLERS LIMITED	25 TH APPLICANT

AND

**MINISTRY OF AGRICULTURE, LIVESTOCK AND FISHERIES 1ST
RESPONDENT**

HON. ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. This ruling concerns the Chamber Summons dated 30th October 2024, brought under Articles 10 and 159 of *the Constitution*, Sections 1A, 1B, 3A and 63 of the *Civil Procedure Act*, Sections 35(2)(b) and 35(4) of the *Arbitration Act*, and Rule 9 of the Arbitration Rules, 1997. The Applicants seek, inter alia, to set aside specific portions of the arbitral award published by Hon. Prof. Githu Muigai on 11th October 2024.
2. The impugned paragraphs are:
 - i. Paragraphs 94 and 107 — in so far as they disallow certain invoices relating to various millers;
 - ii. Paragraphs 115 to 118 — in so far as they disallow interest on the contractual sum; and
 - iii. Paragraphs 130, 131 and 133 — in so far as they reduce the Applicant’s claim for legal costs by fifty percent (50%).
3. The Applicants further seek that the Court substitutes the disallowed amounts with those claimed in the Statement of Claim dated 7th August 2023, totaling Kshs. 2,582,110,035.42, together with interest at 12% per annum from 20th August 2022 until payment in full, and costs of Kshs. 67,947,933.89 with interest thereon at 14% per annum. In the alternative, they seek that the award be remitted to the Tribunal for reconsideration within 30 days.
4. The application is supported by the affidavit of Stephen Ogallo, Operations Manager of the Cereal Millers Association, an umbrella association of the 25 claimants. The Applicants assert that the Arbitral Tribunal committed both factual and legal errors.
5. It is their contention that the failure by the Respondents to file a defence, coupled with a clerical error in submitting unsigned and unstamped invoices, led the Tribunal to discount a sum of Kshs. 268,254,082.42, notwithstanding that the transactions were undisputed.



6. Further, the Tribunal is faulted for disallowing invoices on the ground that they were not stamped by the 1st Respondent, despite acknowledging that the Respondents had not controverted the Applicant's evidence and that the original documents were in the custody of the 1st Respondent. This, the Applicants submit, amounted to a deprivation of property contrary to Article 40 of *the Constitution* and a violation of Article 10 on equity and social justice.
7. The Applicants also contend that the Tribunal erred in failing to award contractual interest, which had been expressly provided for in the parties' agreement, thereby denying them a substantive contractual entitlement.
8. Lastly, they submit that the Tribunal arbitrarily reduced legal costs by 50%, without citing any legal or factual basis, thus unjustly limiting their right to full recovery of costs incurred.
9. The Respondents oppose the application, by way of Grounds of Opposition dated 15th November 2024. The opposition is premised on the following grounds:
 - i. The Applicants have not established a case for the exercise of this Honourable Court's jurisdiction under Section 35 of the *Arbitration Act* for the following reasons:
 - a. The application fails to attain the threshold for setting aside an arbitral award as envisaged in Section 35 of the *Arbitration Act*;
 - b. The application is an invitation to this Honourable Court to a merit hearing to determine the veracity or otherwise of the correctness of the respective party's arguments and amounts in question which is in contravention of the jurisdiction vested to the Honourable Court under Section 35 of the *Arbitration Act*;
 - c. The application is an invitation to this Honourable Court to review the legality of the findings and/or determinations of the arbitral tribunal which is in contravention of the jurisdiction vested to the Honourable Court under Section 35 of the *Arbitration Act*; and
 - d. The application is tantamount to an appeal on the arbitral award.
 - ii. Orders No. 3 and 4 sought in the application cannot issue for the following reasons:
 - a. The orders sought are outside the province of the jurisdiction of this Honourable Court under the agreement between the parties as well as the *Arbitration Act*;
 - b. The arbitral tribunal is functus officio under the agreement between the parties as well as the *Arbitration Act*;
 - c. The circumstances of this case do not warrant the Honourable Court's jurisdiction under Section 35 (4) of the *Arbitration Act*; and
 - d. The arbitral tribunal does not have powers to sit on review of its findings under the agreement between the parties and the *Arbitration Act*.
 - iii. The tenets of public policy demand finality.
 - iv. The application is misadvised, misconceived, and an abuse of the court process



Analysis and determination

10. Having considered the pleadings, affidavits, and rival submissions, the following issues arise for determination:
 - i. Whether the application meets the threshold for setting aside or remitting the award under Section 35 of the *Arbitration Act*; and
 - ii. Whether the Tribunal's findings on the disallowed invoices, interest, and costs fall within any of the statutory grounds justifying interference by this Court.
11. The scope of judicial intervention in arbitral proceedings is deliberately narrow. Under Section 10 of the *Arbitration Act*, no court shall intervene in matters governed by the Act except as provided therein. Section 35 of the *Arbitration Act* permits the Court to set aside an award. It provides as follows:
 1. Recourse to the High Court against an arbitral award may be made only by an application for setting aside the award under subsections (2) and (3).
 2. An arbitral award may be set aside by the High Court only if—
 - (a) the party making the application furnishes proof—
 - i. that 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, the laws of Kenya; or
 - iii. the party making the application 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 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, only that part of the arbitral award which contains decisions on matters not referred to arbitration may be set aside; or
 - v. the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Act from which the parties cannot derogate; or failing such agreement, was not in accordance with this Act; or
 - vi. the making of the award was induced or affected by fraud, bribery, undue influence or corruption;
 - (b) 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 award is in conflict with the public policy of Kenya



11. In *Christ for All Nations v Apollo Insurance Co Ltd* [2002] 2 EA 366 Ringera J (as he then was) held that an award would offend public policy if it was “inconsistent with the Constitution or other laws of Kenya, inimical to the national interest, or contrary to justice and morality.”
13. Similarly, in *EpcO Builders Ltd v Adam S. Marjan Arb. Cause No. 15 of 2014* [2014] eKLR, the Court emphasized that Section 35 is not an avenue for a rehearing or appeal; the Court must not substitute its own assessment of evidence for that of the arbitrator.
14. In the present case, the Applicants’ principal complaint concerns the Tribunal’s treatment of unstamped invoices, the failure to award interest, and the reduction of costs. From the record, these matters were extensively canvassed before the Tribunal. The disallowance of certain invoices was grounded on lack of documentary compliance, and though the Applicants attribute this to clerical omission, such an evaluation falls squarely within the Tribunal’s factual and evidentiary jurisdiction.
15. Whether or not the Tribunal ought to have admitted unstamped or unsigned documents, or awarded contractual interest, are questions of merit and interpretation, not of jurisdiction, bias, or procedural misconduct envisaged under Section 35(2).
16. In *Nyutu Agrovet Ltd v Airtel Networks (K) Ltd & Another* [2019] eKLR the Supreme Court reaffirmed that courts must uphold finality and party autonomy in arbitration, cautioning that judicial interference should be limited to the “narrowest of circumstances.”
17. On the claim that the disallowance of invoices amounted to deprivation of property under Article 40, the Court notes that the arbitral process is founded on contractual consent. Errors in evidential evaluation, however unfortunate, do not per se constitute a constitutional violation.
18. Regarding interest and costs, the Tribunal is vested with discretion under Section 32C and 32B of the Arbitration Act, respectively. Unless the exercise of that discretion is shown to be manifestly capricious or against the terms of the reference, this Court will not interfere. No such demonstration has been made here.
19. From the foregoing analysis, the Court finds that the Applicants have not demonstrated any of the grounds under Section 35(2) of the Arbitration Act to warrant interference with the arbitral award. The grievances raised pertain to the merits of the award and do not constitute procedural or jurisdictional defects.
20. In the circumstances, the Chamber Summons dated 30th October 2024 is dismissed. Costs of this application is awarded to the Respondents.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 16TH DAY OF OCTOBER 2025.

P.M MULWA

JUDGE

In the presence of:

Mr. Kigata for Applicants

Ms. Murugi for Respondents

Court Assistant: Carlos

