

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT**  
**NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**HCCC 382 OF 2016**  
**CONSOLIDATED WITH**  
**ARB E031 OF 2025**

[Coram: Gikonyo ]]

**KENYA AIRPORTS  
AUTHORITY.....APPLICANT**

**VERSUS**

**DOCH COMPANY  
LIMITED.....RESPONDENT**

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**RULING**

**PO: s.35 application was filed out of time**

1. The applicant filed a Notice of Motion dated 16<sup>th</sup> June 2025, expressed to be brought under **section 35(1), (2)(iv), (b) (ii) of the Arbitration Act**, seeking setting aside of the arbitral award dated 18<sup>th</sup> March 2025 by **Justice (Emeritus) Joseph Gregory Nyamu**. This kind of

application is now commonly known as **section 35 application.**

2. In response to the application, the respondent filed a preliminary Objection (PO) dated 1st August 2025 against the applicant's application dated 16th June 2025.

3. The PO is founded on two grounds, namely: -

**a) The Applicant's Application dated 16.06.2025 is time barred by dint of Section 35 (3) of the Arbitration Act, 1995, the applicant and respondent having been notified of the award by the Arbitrator on 18/03/2022.**

**b) The applicant's application herein is an abuse of the Court process and ought to be dismissed with costs.**

4. The court directed that the PO be heard first.

5. The respondent filed written submissions dated 1<sup>st</sup> August 2025.
6. The court also directed the applicant to file its submissions.
7. However, at the time of penning this ruling, the applicant's submissions were not sighted in the Judiciary's Case Tracking System.
8. The respondent submitted that the arbitrator notified the parties of the award by way of an e-mail on **18/03/2022**. It contended that any application brought under **section 35(3) of the Arbitration Act**, such as the one in this matter after **17/06/2022**, is time-barred, and therefore, fatally defective and ought to be dismissed with costs.

### **Analysis and Determination**

9. The PO raises a critical matter; that the application is non-compliant for it was filed out of the statutory timeline for filing an application for setting aside an arbitral award under **section 35 of the Arbitration Act.**

10. **Section 35 (3) of the Arbitration Act** provides that: -

**“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.”**

11. The respondent submitted that the application was filed outside the statutory period provided in **section 35 of the Arbitration Act** given that the arbitrator notified the parties that the

arbitral award was ready on 18<sup>th</sup> March 2022.

12. The applicant confirmed that the arbitrator, in a letter dated 18<sup>th</sup> March 2022, advised the parties that the award was ready for collection on payment of his fees. The applicant's case is that following the issuance of that letter, there were discussions held on the arbitrator's fees which was finally agreed at Kshs. 7,000,000/-.

13. The applicant asserted that it received the award on 18<sup>th</sup> March 2025 after the arbitrator confirmed receipt of his fees and notified the parties by a letter dated 7<sup>th</sup> March 2025 that the award was ready for collection.

14. A preliminary objection must be a matter of law which is capable of disposing of the suit, it must not be

blurred by factual details calling for evidence and it must not call upon the court to exercise discretion. **Mukisa Biscuits Manufacturing Co. Limited v West End Distributors Ltd [1969] EA 696.**

15. There are two streams of evidence on when the award was received or parties were notified it was ready for collection. The account by the applicant and that by the respondent are disparate. The tension can only be resolved through probing of evidence. Thus, in the circumstances of this case, rendering a preliminary objection most unsuited method of settling the question on when the arbitrator notified the parties that the award was ready. Accordingly, the PO does not meet the threshold set in the **Mukhisa Biscuit case.**

16. And, therefore, the PO fails, and it is dismissed with costs to the applicant.

**Dated, signed and delivered through  
Microsoft Teams online application this  
22<sup>nd</sup> day of October, 2025**

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**F. Gikonyo M**

**Judge**

**In the presence of:**

Wachanga for defendant/Applicant

Achoki for Respondent

CA Kinyua