

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**COMMERCIAL AND TAX DIVISION**  
**MISC E412 OF 2024**

[Coram: Gikonyo ]]

**MENTOR GROUP  
LIMITED.....APPLICAN  
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**VERSUS**

**DOREEN KILBIA (SOLE  
ARBITRATOR).....1ST RESPONDENT**

**GEORGE NDUATI  
MUNENE.....2ND RESPONDENT**

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**RULING**

**Whether arbitrator must possess Industry  
Expertise**

1. The dispute between the applicant and the 2<sup>nd</sup> respondent is before the 1<sup>st</sup> respondent for arbitration. Through a letter dated 8<sup>th</sup> December 2023, followed by an application dated 23<sup>rd</sup> February 2024 the applicant challenged the appointment of the 1<sup>st</sup> respondent as the arbitrator.

2. The notice of motion dated 16<sup>th</sup> May 2024, expressed to be brought under **sections 13 and 14 of the Arbitration Act**, is seeking that its challenge for the removal of the arbitrator be upheld and an order directing the **Chartered Institute of Arbitrators (CI Arb) (Kenya Chapter)** to appoint another arbitrator to determine the dispute between the parties.

3. The application is premised on the grounds set forth in the application, the supporting and further affidavits sworn by the applicant's managing director, **Daniel Ojijo** and written submissions dated 14<sup>th</sup> June 2024.

4. In summary, the grounds are: -

(1) the 2<sup>nd</sup> respondent failed to involve it in the appointment of the 1<sup>st</sup> respondent.

(2) the 1<sup>st</sup> respondent does not meet the qualifications to hear and determine the dispute subject to arbitral proceedings.

(3) The applicant is apprehensive that justice will not be served upon it due to the arbitrator's impartiality.

5. The applicant relied on the following cases: -

(1) **West Park Properties Limited v Dina Builders Limited & another; Chairman, Architectural Association of Kenya (Interested Party) [2019] eKLR**

(2) **Surya Holdings Limited & 4 others v ICICI Bank Limited & another [2015] eKLR**

(3) **Modern Engineering v Miskin [1981] 1 Lloyd's Rep 515**

## **Responses**

6. The 1<sup>st</sup> respondent/ sole arbitrator opposed the application through a replying affidavit sworn on 3<sup>rd</sup> June 2024. She stated that she is a Certified and Accredited Arbitrator (MCI Arb) in good standing with the Chartered Institute of

Arbitrators, United Kingdom and Kenya branches since 2018. She also stated that upon the 2<sup>nd</sup> respondent's application to the CIArb for the appointment of an arbitrator, the Chairman of the CIArb, Kenya Branch appointed her as the sole arbitrator on 18<sup>th</sup> October 2023 to deal with the dispute between the parties. She elected to rely on the award issued on 3<sup>rd</sup> May 2024 on the applicant's application of 23<sup>rd</sup> February 2024 challenging her appointment.

7. The 2<sup>nd</sup> respondent filed written submissions dated 26<sup>th</sup> June 2024. It contended that: -

- (1) It notified the applicant on the default appointment mechanism after parties could not agree on an arbitrator.
- (2) The arbitrator was appointed by the CIArb Kenya Branch through their internal processes pursuant to section 12 (3) and (4) of the Arbitration Act.

- (3) The applicant was informed of the appointment of the 1<sup>st</sup> respondent, the proceedings commenced, and the applicants even joined the preliminary meeting and received orders for directions from the arbitrator.
- (4) The applicant did not raise any objection to the said appointment until 8<sup>th</sup> December 2023, failing to comply with **Section 12(5)** which provides that an application for challenge must be made within 14 days from the date of the appointment.
- (5) As to competence, the 2nd respondent relied on the award.
- (6) The claim of impartiality is unfounded, and it is a new allegation that was not put forth before the arbitral tribunal and must therefore fail.

8. The 2nd respondent relied on the following cases: -

- (1) **Amina Karama v Njagi Gachangua & 3 others [2020] eKLR**
- (2) **Edward Muriu Kamau & 4 others all t/a Muriu, Mungai & Co Advocates v John Syekei Nyandieka [2014] KEHC 2947 (KLR)**
- (3) **Mumias Sugar Company Ltd v Mumias Outgrowers Company (1998) Ltd [2014] eKLR**
- (4) **Mumias Sugar Company Limited v Mumias Outgrowers Co. (1998) Ltd [2012] eKLR**
- (5) **Alliance Media Kenya Limited V Monier 2000 Limited & another [2007] eKLR**

### **Analysis and Determination**

9. The issue before the court is whether the applicant has made a case for the removal of the arbitrator and the appointment of a new arbitrator.
10. The first ground is that the applicant did not participate in the appointment of the 1<sup>st</sup> respondent as the arbitrator.
11. The 2nd respondent asserted that after parties could not agree on an arbitrator, it notified the applicant on the default appointment mechanism. That the arbitrator was appointed by the CIArb Kenya Branch through their internal processes pursuant to section 12 (3) and (4) of the Arbitration Act.
12. By a letter dated 25th August 2023, the 2nd respondent's advocates wrote to the CIArb invoking clause 11 of the agreement and requesting the appointment of a suitable sole arbitrator. The advocates indicated that **Mr. Samson Maisiba, QS** had been in conduct of

an arbitration over a dispute that arose in 2013. The court removed the first arbitrator for delay and inaction upon an application by the claimant.

13. Appointment of arbitrator in this case was governed by Clause 11 of the agreement which provides that any dispute arising in connection with the agreement ...shall be referred to a single arbitrator to be appointed by the Chairman of the CI Arb in accordance with the Arbitration Act.

14. Therefore, the first ground is without basis, and it is dismissed.

### **Capacity of the Arbitrator**

15. The applicant challenged the qualifications to hear and determine the dispute subject to arbitral proceedings. It cited the complexity of the dispute and the value of the subject matter. It asserted that the arbitrator lacks

expertise in quantity surveying and building construction.

16. The 1st and 2nd respondents relied on the award.

17. At para. 46 of the award, the arbitrator observed that in the arbitration agreement, the parties did not specify the arbitrator's additional qualifications in quantity surveying and building and construction. She also observed that the applicant did not provide any evidence to the contrary.

18. The arbitrator reasoned that it was not essential for the arbitrator in the dispute to have industry specific knowledge. That if issues are raised during the arbitral proceedings necessitating industry specific qualifications in quantity surveying and building construction or in any other field, the parties or the arbitral tribunal may engage one

or more experts to provide a report on the matter.

19. This is in line with section 27 of the Arbitration Act and the court's reasoning in **Edward Muriu Kamau & 4 others all trading as Muriu, Mungai & Co. Advocates v John Sykei Nyandi [supra]**.

20. The challenge of the arbitrator's capacity is also without basis and is dismissed.

### **Impartiality**

21. The applicant indicated that it is apprehensive that justice will not be served upon it due to the arbitrator's impartiality.

22. I note from the award that the applicant did not raise the ground of impartiality in its application of 23<sup>rd</sup> February 2024 before the arbitrator. This is contrary to the challenge procedure under section 14 (2) and (3) of the Arbitration Act. The ground therefore fails.

23. The procedures in the Arbitration Act are aimed at promoting party autonomy and ensuring respect by the court for the alternative forum the parties choose. They are also intended to prevent any veto kind of power wielding by one party who may unscrupulously wish to frustrate the arbitral process. See also article 159(2)(c) of the Constitution as well as the AJS Policy of the duty to promote; respect, protect and reform alternative justice mechanisms.

**Disposition**

24. In the upshot, the application dated 16<sup>th</sup> May 2024 is dismissed with costs for want of merit.

**Dated, signed and delivered through  
Microsoft Teams online application this 23<sup>rd</sup>  
day of October, 2025**

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**F. Gikonyo M**

## **Judge**

### **In the presence of:**

Ms. Onchagwa for Nyachoti for Applicant

Ms. Kibia in person

Njoroge for 2<sup>nd</sup> respondent

CA Kinyua