



Wealthsmith Limited & another v Hirji & 45 others; Nyachoti (Interested Party) (Arbitration Cause E030 & E067 of 2024 (Consolidated)) [2025] KEHC 15094 (KLR) (Commercial and Tax) (21 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15094 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
ARBITRATION CAUSE E030 & E067 OF 2024 (CONSOLIDATED)**

JWW MONG'ARE, J

OCTOBER 21, 2025

BETWEEN

WEALTHSMITH LIMITED 1ST APPLICANT

BARLETTA HOLDINGS LIMITED 2ND APPLICANT

AND

ANVESH HIRJI & 45 OTHERS RESPONDENT

AND

CALVIN NYACHOTI INTERESTED PARTY

RULING

1. By an application dated 30th September 2024, the Applicants seek to set aside the final corrected Arbitral Award published by the Interested Party (“the Arbitrator”) on 26th July 2024 (“the Award”). The application is supported by the affidavit of the 1st Applicant’s director, Gerald Munyao Mwanza, sworn on 30th September 2024. The Applicants argue that the Award is invalid and should be nullified primarily because the Arbitrator was not qualified according to the original arbitration agreement which required the Arbitrator to have at least 15 years of post-admission legal experience. The Applicants claim that the Arbitrator did not meet this requirement and that they objected to his appointment before the arbitration began, but the Arbitrator deferred his ruling on the issue until the end of the proceedings.
2. The Applicants claim that the Arbitrator delivered the award on 3rd May 2024, long after the final submissions were highlighted on 30th November 2022 and that this delay is cited as a violation of the applicable arbitration rules and public policy. The Applicants also describe the Award as



being unjustifiable, manifestly excessive beyond the dispute referred to the Arbitrator, exorbitant and punitive.

3. Ceaser Kanyiswore a replying affidavit on 11th February 2025 on behalf of the Respondents and in opposition to the Applicants' application. The Respondents state that the Chartered Institute of Arbitrators ("the Institute") after reviewing the arbitration agreements and their requirements, duly appointed the Arbitrator and that all parties, including the Applicants, acknowledged and accepted this appointment in the first preliminary meeting on 14th October 2021, as recorded in the Arbitrator's Order for Directions. They reference a letter from the Institute's Chairman dated 23rd February 2022, which confirmed that the Arbitrator met the 15-year post-admission experience requirement stipulated in the contract.
4. The Respondents note that the Applicants raised an objection to the Arbitrator's jurisdiction in November 2021 and that the Arbitrator reserved his ruling on this issue and ultimately addressed it in the Final Award, determining that the objection had no merit and dismissed it. The Respondents argue that granting the application would undermine the finality of arbitration proceedings and the autonomy of the parties who agreed to appoint an Arbitrator through the Institute. They contend that the Award is detailed and that the Arbitrator meticulously addressed all issues, including his own jurisdiction, and found the Respondents had largely proven their case. The Award granted significant relief to the Respondents, including Kshs.61,725,000/= in outstanding returns on investment, an order for the Applicants to surrender possession of the subject properties to the Respondents, Interest and Costs of the arbitration.
5. For the above reasons, the Respondents urge the Court to find that the Applicants' application is unfounded and uncorroborated and that the same should be dismissed with costs. The application was canvassed by way of written submissions which are on record and I have considered the same and I will be making relevant references to them in my determination later on in this ruling. I note that the Applicants have also filed an appeal to the initial award published by the Arbitrator where their objection in respect of the Arbitrator's jurisdiction was dismissed. I will be dealing with this appeal in this ruling as well.

Analysis and Determination

6. I propose to first deal with the issue of the Arbitrator's jurisdiction and competence to hear and determine the parties' dispute. The Respondents and the Arbitrator in the Award state that the tribunal was appointed by the Institute on 20th September 2021. The Respondent has also annexed the Arbitrator's Order for Directions No.1 which restates the same and that "By consent, both parties confirmed the jurisdiction of Mr. Calvin Nyachoti, Chartered Arbitrator to preside as sole Arbitrator over the dispute on return on investments made on greenhouses...." When the Applicants challenged and sought the removal of the Arbitrator to hear the parties' dispute, the Chairman of the Institute, in a letter dated 23rd February 2022 responded that he was *functus officio* on the appointment and that the Respondents had the right to challenge the jurisdiction under section 14 of the *Arbitration Act* (Chapter 49 of the Laws of Kenya). In any case, he confirmed that the Arbitrator "...qualifies on the requirement of years of practice".
7. Further, in the Award, at paras. 195-225, the Arbitrator ruled on his own jurisdiction after analyzing the arbitration clause and concluded that the requirement for a "practicing advocate of not less than fifteen (15) years standing" applied specifically to a party-appointed Arbitrator. Since the parties failed to agree, the Institute appointed him under its own rules, and its decision on his suitability was final. He therefore dismissed the Applicants' jurisdictional challenge as having no merit.



8. From the above, it is clear that the Institute, the contractually designated authority, appointed the Arbitrator, both parties, including the Applicants, formally consented to his jurisdiction at the first meeting, the Institute later reaffirmed he was qualified when challenged and that the Arbitrator himself, as empowered by the *Arbitration Act*, heard and rejected the challenge on its merits within the Award. This body of evidence presents a strong case that the Arbitrator was duly appointed, initially accepted by all, and acted within his jurisdiction throughout the arbitration process. I find that the Applicants' challenge on his jurisdiction had no merit before the Arbitrator and has no merit before this court. It is hereby dismissed.
9. The Applicants have also stated that the Arbitrator went beyond his scope and the dispute referred to him. Clause 10 of the parties' agreement provided that the parties could refer to arbitration "Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof...". As this court expressed itself in *Kenya Tea Development Agency Ltd & 7 others v Savings Tea Brokers Limited* [2015] KEHC 6030 (KLR), the jurisdiction of the Arbitrator is tethered by the arbitration agreement, reference and the law. The express words used in the arbitration agreement or as interpreted with reference to the subject matter of the contract will determine whether the issues raised by an applicant are contemplated by the agreement or fall within the terms or scope of the reference to arbitration. Even where general, broad, generous and elastic words are used in an arbitration agreement or reference to arbitration, courts will still interpret them by reference to the subject matter of the contract.
10. The Award captures the parties' dispute and the parties advanced their respective positions on the dispute and filed separate list of issues for determination by the Arbitrator. The Arbitrator itemized and abridged the said issues and made a determination on the same based on the parties' pleadings, submissions and evidence before him. Therefore, I fail to see how it can be said that he made a determination outside the parties' Agreement and outside his scope of reference. I find that the issues raised by the parties were in respect of the parties' agreement and that the Arbitrator limited himself to the same in his determination. This ground by the Applicants therefore fails.
11. The Applicants have also stated that it is against public policy for the Award to have been delivered beyond the stipulated time by the Rules of the Institute. They submit that Rules 115 and 116 thereof call for publishing of the Award "...as far as practicable but no later than 3 months from the date of close of hearing" and that "if it appears to the Arbitral Tribunal that the final award may not be published within the time limits provided in these Rules, the Arbitral Tribunal shall notify the parties in writing and the branch where the Arbitrator is appointed by the branch..."
12. In response, the Respondents submit that the Arbitrator communicated to parties that the Award was ready and requested parties to settle their outstanding balances to his fees to enable him deliver the award. Upon request, the Respondents settled the balance of their fees while the Applicants neglected and/or refused to do so. As such, the Respondents submit that the Applicants clearly and significantly contributed to the delays in delivery of the Award and as such are guilty of having unclean hands. They urge that the Applicants must be estopped from placing reliance on a ground for challenge which they contributed to and the court should find that the Award was delivered reasonably within the time availed to do so.
13. From the record, it is not evidently clear why the Award was published on 3rd May 2024 when the parties highlighted their submissions on 30th November 2022. It is also not clear when the Arbitrator informed the parties that the Award was ready for collection. However, I am inclined to agree with the Respondents that there is no law or subsidiary legislation prescribing a timeline or stipulation within which Arbitrators ought to deliver their awards. It should not be lost that for an Award to be



set aside for being contrary to public policy, it must be inconsistent with the constitution or other laws of Kenya, whether written or unwritten; or inimical to the national interest of Kenya; or contrary to justice and morality. In sum, public policy must have a connotation of national interest (see Christ for All Nations v Apollo Insurance Co Ltd [2002] 2 E.A 366 and Mall Developers Limited v Postal Corporation of Kenya [2014] KEHC 1464 (KLR))

14. It is my finding that the Rules of the Institute relied on by the Applicants are neither national nor do they constitute public policy and therefore, the Award cannot be set aside as a matter of public policy based on an infraction of these private Rules. This ground by the Applicants is therefore dismissed.

Conclusion and Disposition

15. In the foregoing, I dismiss both of the Applicants' application and appeal with costs to the Respondents assessed at Kshs.100,000.00/=. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 21ST DAY OF OCTOBER 2025

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J.W.W. MONGARE

JUDGE

In The Presence Of

Mr. Mutuku Mbithi for the Applicant.

Mr. Gichuki for the Respondent.

Amos - Court Assistant

