



**Ethihad Cap Africa Limited v Placid View Properties; Kariuki
(Interested Party) (Commercial Miscellaneous Application E310 of 2025)
[2025] KEHC 18502 (KLR) (Commercial and Tax) (4 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18502 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E310 OF 2025
BK NJOROGE, J
DECEMBER 4, 2025**

BETWEEN

ETHIHAD CAP AFRICA LIMITED APPLICANT

AND

PLACID VIEW PROPERTIES RESPONDENT

AND

JAMES NGOTHO KARIUKI INTERESTED PARTY

RULING

1. This matter comes up for Ruling on an application seeking the enforcement of an Arbitral Award. The Applicant has filed an application by way of a Chamber Summons dated 21.3.2025. It seeks the following orders;
 - a. Spent.
 - b. That the Arbitral Award Published by the Interested party on the 8th March 2024 be and is hereby recognized, adopted and enforced as a judgment and Decree of this Honourable Court and leave be and is hereby granted for the Applicant to enforce the Arbitral Award.
 - c. That costs of the Application be provided for.

Background Facts:

2. The Application is supported by the Affidavit of Walid Khalid Abdulkarim. He depones that the Arbitration between the Applicant and the Respondent is concluded. That the Interested Party



published the Arbitral Award on 8.3.2024. The Applicant was awarded a claim of USD 175,000.00 and USD 55,716.16 which is to be paid by the Respondent.

3. The Applicant states that it has complied with all the requirements of the Arbitration Act relating to enforcement of an Arbitral Award.
4. The Application is opposed by the Respondent. The Respondent did not file any Replying Affidavit to the Application for enforcement.

The Respondent filed Grounds of Opposition dated 25.11.2025. It also filed written submissions dated 25.11.2025. The Court notes that these pleadings were filed long after the Court had already noted that the Respondent has failed to respond to the application. The Court had already reserved a Ruling date. Therefore, the Respondent failed to comply with the timelines set out, by the Court. This smirks of dilatoriness on the part of the Respondent.

Issues of Determination

5. The Court having perused the Application, the Grounds of Opposition and the respective submissions filed, frames two issues for determination;
 - a. Whether the Court should postpone or stay all proceedings herein until an Appeal to the Court of Appeal is heard and determined.
 - b. Whether the Arbitral Award Published by the Interested Party on 8.3.2024 should be enforced as a decree of the Court.

Analysis

6. It is not in dispute that there existed an Arbitration agreement between the Applicant and the Respondent. That when a dispute arose the matter was referred to Arbitration. The matter was heard before the Interested Party who published the Final Award dated 8.3.2024.

a. Whether the Court should postpone or stay all proceedings herein until an Appeal to the Court of Appeal is heard and determined.

7. The Court notes that previously the Respondent moved this Court (differently constituted) to set aside the Final Arbitral Award herein. This was by way of an Originating Summons dated 8.5.2024.
8. By a Ruling delivered by Honourable Lady Justice Rhoda Rutto dated 28.2.2025, the Court declined to set aside the Arbitral Award. This Ruling is the subject of an Appeal in Nairobi Civil Application No. E220 of 2025. It is noteworthy that though the Respondent did apply to the Court of Appeal for a stay of execution pending Appeal, no stay order has been presented to the Court having been issued by the Court of Appeal.
9. Equally, no application has been filed before this Court seeking for a stay of execution. This Court is alive to the fact that the filing of an Appeal does not amount to a stay of execution. A decision made by a Court remains valid unless and until it is stayed or revoked, set aside or varied by an appellate Court. To imagine that Courts must as of right stay all of their decisions once they are faced by an appeal, is to misinterpret the law and procedure. Order 42 Rule 6 of the Civil Procedure Rules speaks to this Court as follows;

6. Stay in case of appeal [Order 42, rule 6.]
 - (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order



but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

10. The Court is not persuaded that it should either stay or postpone its decision, as there are no orders barring the execution or enforcement of the Final Arbitral Award.

b. Whether the Arbitral Award Published by the Interested Party on 8.3.2024 should be enforced as a decree of the Court.

11. Section 36 (1) of the *Arbitration Act* states as follows:

36. Recognition and enforcement of awards

- (1) A domestic arbitral award shall be recognized as binding and, upon application in writing to the High Court, shall be enforced subject to this section and Section 37.

12. It follows that the Applicant is entitled to have the Final Award recognized unless there are legal impediments to the enforcement.

13. Section 37 of the *Arbitration Act* states as follows:

37. Grounds for refusal of recognition or enforcement

- (1) The recognition or enforcement of an arbitral award, irrespective of the state in which it was made, may be refused only—
- (a) at the request of the party against whom it is invoked, if that party furnishes to the High Court proof that—
- (i) 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, under the law of the state where the arbitral award was made;
- (iii) the party against whom the arbitral award is invoked 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 it 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, that part of the arbitral award which contains decisions on matters referred to arbitration may be recognised and enforced; or
- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any



agreement by the parties, was not in accordance with the law of the state where the arbitration took place; or

(vi) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which, or under the law of which, that arbitral award was made; or

(vii) the making of the arbitral award was induced or affected by fraud, bribery, corruption or undue influence;

(b) if 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 recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya.

14. The filing of an Appeal is not one of the legal impediments set out in Section 37 of the *Arbitration Act*. The Respondent has not pleaded any of the legal impediments set out above.

15. The Court has seen a copy of the Agreement that contains the Arbitral clause. The Court has also seen a copy of the Final Arbitral Award dated 8.5.2024.

16. The Court relies on the decision of Honourable Justice Ado Moses in *Mwangi v Mizizi Africa Homes Limited* [2025] KEHC 16429 (KLR) when the good judge stated as follows:

“The Court is thus guided by the principle articulated in *Rupra*

Construction Company Limited v Longonot Place Limited [2021] eKLR in which it was held by Serгон J that:

“In the absence of any credible proof by the respondent as to why the arbitral award should not be enforced and recognized... I find no basis to decline to grant the orders sought...”

17. The Court is persuaded that the application is merited.

18. As to costs, the same are awarded to the successful Applicant to be borne by the Respondent.

Determination

19. The Applicant’s application by way of a Chamber Summons dated 21.3.2025 is allowed in the following terms;

a) That the Arbitral Award Published by the Interested party on the 8th March 2024 be and is hereby recognized, adopted and enforced as a judgment and Decree of this Honourable Court and leave be and is hereby granted for the Applicant to enforce the Arbitral Award.

b) That costs of the Application are awarded to the Applicant to be borne by the Respondent.

20. It is so ordered.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 4TH DAY OF DECEMBER, 2025.

NJOROGE BENJAMIN K.



JUDGE

In the presence of;

Mr. Olaha for the Applicant.

Miss Obuya for the Respondent.

Mr. Peter Wabwire - Court Assistant.

