

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCARB NO. E041 OF 2024

PAMELA **MWIKALI**
TUTUI.....**APPLICANT**

VERSUS

SUNLIFE **PROPERTIES**
LIMITED.....**RESPONDENT**

RULING

1. This is a Ruling in respect of the Applicant’s Notice of Motion dated 18th June, 2024.
2. The Applicant filed the Notice of Motion dated 18th June 2024 and sought the following orders;
 - 1.) *The Court to recognize, adopt and enforce the Final Arbitral Award between parties hereto issued by Eng. Paul Thang'a Gichuhi on the 2nd July, 2020 as a Judgment of the Court and the Applicant be granted leave to execute the same as a decree of the Court being: -*
 - a.) *The Sale Agreement dated 27th October, 2014 is now nullified due to breach by both parties.*

- b.) *I award the Claimant Kshs.11,673,066 to be paid by the Respondent within 60 days of the date of this Award.*
 - c.)*The Respondent takes possession of the suit property within 60 days and after paying the Claimant the awarded amount. If the Claimant elects to stay in the property, then she is to pay the Respondent the due rent.*
 - d.) *The Claimant to leave the apartment as is and to not "uproot anything". She is to only remove the furniture and personal items but NOT the fixtures and fittings.*
 - e.) *Payments not made on time shall attract simple interest at current rates.*
- 2.) *The Respondent be condemned to pay the Applicant's costs of this Application.*

Background Facts

3. The Application was supported by the Affidavit of **Pamela Mwikali Tutui**, who stated that the parties consented to the reference of this matter to Arbitration. That the Arbitration process was duly undertaken, and the Award was issued on the 2nd July 2020. Therefore, there is a need to have this Court adopt the aforesaid Arbitral Award as a Judgement of the Court for execution purposes.
4. Notably, the Respondent did not file any response to this Application.

Issues for determination

5. After considering the Application, the written submissions and perusing the Annexures, this Court has framed only one issue for determination;

a.) *Whether the Applicant has made out a case for recognition and adoption and enforcement of the Arbitral Award as a judgment of the Court.*

Analysis

6. The Applicant filed the Application herein seeking to have that Final Award recognized and adopted by the Court.

Section 32A of the Arbitration Act provides that an Arbitral Award is final and is binding upon the parties. No recourse is provided against a Final Award otherwise than in the manner provided for in the Act itself. **Section 36(1) of the Arbitration Act** provides as follows: -

“36. (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.

(2) ...

(3) Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement must furnish.

(a) the original arbitral award or a duly certified copy of it; and

(b) the original arbitration agreement or a duly certified copy of it.

7. In light of the above, the Court has perused the record and the Applicant has attached a certified copy of the Arbitral Award dated 2nd July 2020. However, neither is the original arbitration agreement nor a duly certified copy of it filed or attached to the application before the Court.

8. The Court is of the view that failure to attach the original arbitration agreement or a duly certified copy of it falls foul of Section 36(3) of the Arbitration Act. No reasons have been advanced as to why the Court should dispense with the production of the aforesaid document as required in strict compliance with the law. The decisions of this Court in **Omar v Muigai [2022] KEHC 303 (KLR)**, **Samura Engineering Limited v Don-Woods Company Limited [2014] KEHC 5423 (KLR)**, **Dinesh Construction Limited & another v Aircon Electra Services (Nairobi) Limited [2021] KEHC 6762 (KLR)** and **Kenya Pipeline Company Limited v Terra Craft (K) Limited [2020] KEHC 9928 (KLR)** fortify this Court's opinion. The danger being that this Court should not err by enforcing an Arbitral Award in absence of proof that there was an Arbitration agreement.
9. The Application is found to be premature for failure to attach the requisite documentation. The Applicant is directed to file the documentation within Thirty (30) days and serve the

Respondent herein by substituted service in terms of the leave granted previous on 17th December, 2024.

10. The Applicant is to relist the application before this Court of consideration of all the documentation once the same are filed.

Determination

11. The Application is premature for want of attaching or furnishing before this Court of the original Arbitration agreement or a duly certified copy of the same.
12. The Applicant is granted leave to file the documents within the next Thirty (30) days as well as serve the Respondent by substituted service and provide proof by way of an Affidavit of service.
13. The application will be relisted before this Court for hearing and consideration of all the documentation required under **Section 36(3) of the Arbitration Act.**
14. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS
04TH DAY OF DECEMBER, 2025.**

**NJOROGE BENJAMIN K.
JUDGE.**

In the presence of;

Mr. Museve for the Applicant.

N/A for the Respondent.

Mr. Peter Wabwire - Court Assistant.