

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMMARB E051 OF 2025

ADVANCED INNOVATIONS LIMITED.....
.....APPLICANT

VERSUS

JUMBO JACKPOT (K) LIMITED.....
RESPONDENT

RULING

1. This Ruling concerns the Applicant’s Notice of Motion dated 24th June 2025, brought pursuant to sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, section 35(2)(b)(ii) of the Arbitration Act, Rule 7 of the Arbitration Rules, and Order 51 rule 1 of the Civil Procedure Rules. The Applicant seeks, inter alia, an order for stay of enforcement and the setting aside of the final arbitral award published on 29th May 2025 by the sole arbitrator, Mr. Ecrone O. Omulloh.
2. The application is supported by the affidavit of Roderick Dominique Levitton and is premised on the contention that the arbitral award is contrary to public policy. The gravamen of the Applicant’s case is that the Management Agreement, which formed the substratum of the arbitral proceedings, was illegal and void *ab initio* for contravening section 12 of the Betting, Lotteries and Gaming Act. According to the Applicant, the agreement, though couched as a

management arrangement, in substance amounted to an unlawful transfer or delegation of the Respondent's betting licence in exchange for monthly payments derived from gaming revenues.

3. It is further averred that the conduct of the parties revealed that the Applicant assumed the full role of a licence holder, including operational control of the casino, custody and management of revenues, payment of staff, financial reporting, and contribution towards licence fees. The Applicant contends that the arbitrator failed to interrogate the true substance of the arrangement, erroneously treated an illegal contract as lawful, and consequently enforced rights arising from an agreement prohibited by statute.
4. On these grounds, the Applicant maintains that enforcement of the arbitral award would undermine statutory regulation, encourage circumvention of licensing requirements, and offend public interest and public policy. The Applicant therefore urges the Court to set aside the arbitral award in its entirety and to grant a stay of enforcement, together with costs.
5. The application is opposed. The Respondent filed a replying affidavit sworn by Paolo Molinaro on 14th July 2025. The Respondent contends that the application is misconceived, speculative, and calculated to delay enjoyment of the fruits of a valid arbitral award. It is averred that the dispute was voluntarily referred to arbitration after a Preliminary Objection raised by the Applicant in Kisumu CMCC No. E087

of 2021 was upheld for want of jurisdiction, and following a consent by the parties referring the dispute to arbitration pursuant to a binding arbitration clause.

6. The Respondent asserts that the arbitrator properly assumed jurisdiction and thoroughly interrogated the Management Agreement dated 30th July 2011 before finding it enforceable. It is further contended that the Applicant failed, both before the arbitral tribunal and before this Court, to demonstrate any unlawful transfer of a betting licence or contravention of section 12 of the Betting, Lotteries and Gaming Act. The Respondent maintains that the Applicant is impermissibly inviting this Court to re-evaluate the merits of the dispute and to consider evidence that ought to have been tendered before the arbitrator.
7. From the pleadings and submissions, the single issue that falls for determination is whether the Applicant has satisfied the statutory threshold for setting aside an arbitral award on the ground that it is contrary to public policy under section 35 (2) (b) (ii) of the Arbitration Act.
8. **Section 35 (2) (b) (ii)** of the **Arbitration Act** provides that an arbitral award may be set aside if the High Court finds that the award conflicts with the public policy of Kenya. The scope of this ground has been judicially settled. In **Christ for All Nations v Apollo Insurance Co. Ltd [2002] EA 366**, the Court held that:

“An award can be set aside under section 35 (2) (b) (ii) of the Arbitration Act as being

inconsistent with the public policy of Kenya if it is shown that it was either (a) inconsistent with the Constitution or other laws of Kenya, whether written or unwritten, or (b) inimical to the national interests of Kenya, or (c) contrary to justice and morality.”

9. Similarly, in **Kenya Shell Ltd v Kobil Petroleum Ltd [2006] eKLR**, the Court emphasized that public policy is a narrow and exceptional ground, not to be invoked to reopen the merits of an arbitral award.
10. The Court is also guided by the principle of minimal judicial intervention in arbitral proceedings, as codified under section 10 of the Arbitration Act and reaffirmed in **Anne Mumbi Hinga v Victoria Njoki Gathara [2009] eKLR**, where the Court held that parties who choose arbitration must ordinarily live with the outcome, save in the clearest of cases falling within the statutory grounds for intervention.
11. Turning to the present application, the Applicant’s complaint is anchored on alleged illegality of the Management Agreement for contravening section 12 of the Betting, Lotteries and Gaming Act. Illegality, where proved, may indeed engage public policy, as courts will not lend their aid to the enforcement of contracts prohibited by statute. However, the burden rests squarely on the party alleging illegality to demonstrate, with cogent evidence, that the

contract in question was unlawful and that the arbitral tribunal sanctioned or enforced such illegality.

12. From the record, it is evident that the issue of the legality of the Management Agreement was raised and considered before the arbitral tribunal. The arbitrator examined the terms of the agreement and the evidence placed before him and concluded that the agreement did not amount to an unlawful transfer of a betting licence. The Applicant has not demonstrated that the arbitrator ignored the law, misapprehended section 12 of the Betting, Lotteries and Gaming Act, or enforced a contract that was on its face prohibited by statute.
13. What the Applicant seeks, in substance, is a re-evaluation of the evidence and a different conclusion on the factual and legal character of the Management Agreement. That invitation must be declined. As held in **Associated Engineering Co. v Government of Andhra Pradesh (1991) AIR 232**, an error of fact or law, or an erroneous appreciation of evidence by an arbitrator, does not of itself amount to a violation of public policy.
14. Similarly, **Mahican Investments Limited vs Giovani Gaid & 80 others [2005] KEHC 1267 (KLR)**, Justice P.J. Ransley stated the position with which I agree. He said
- “A court will not interfere with the decision of arbitration even if it is apparently a misinterpretation of the contract, as this is the role of the Arbitrator. To interfere would place***

the court in the position of the Court of Appeal, which the whole intent of the Act is to avoid. The purpose of the Act is to bring finality to the disputes between the parties.”

15. The Court is further satisfied that the Applicant voluntarily invoked the arbitration process after successfully challenging the jurisdiction of the Magistrate’s Court, and cannot now approbate and reprobate by attacking the arbitral outcome merely because it is dissatisfied with the award.
16. In the circumstances, the Court finds that the Applicant has failed to establish that the arbitral award dated 29th May 2025 is contrary to the public policy of Kenya within the meaning of section 35 (2) (b) (ii) of the Arbitration Act. No basis has therefore been laid for setting aside the award or for staying its enforcement.
17. The Notice of Motion dated 24th June 2025 is accordingly dismissed in its entirety. The costs of the application shall be borne by the Applicant.

It is so ordered.

RULING delivered virtually, dated and signed at **NAIROBI**

This **29th** day of **January** 2026.

P.M. MULWA
JUDGE

In the presence of:

Ms. Koech for Applicant

Mr. Mukasa for Respondent

Court Assistant: *Carlos*