

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
HCCOMMARB NO. E072 OF 2024

JOSHUA SOKOINE APALE

T/A NEON ENTERTAINMENT.....
APPLICANT

-VERSUS-

CIC GENERAL INSURANCE
LIMITED.....RESPONDENT

RULING

1. The Applicant filed the Chamber Summons dated 16th October 2024 seeking the following orders;

- a) *The Additional Award on Party-to-Party Costs published by Nancy Manyara (MCIArb) on the 16th day of July 2024 in Nairobi be recognized and adopted as a judgment of this Court.*
- b) *The applicant be granted leave to enforce the Additional Award on Party-to-Party Costs as a decree of this Court.*
- c) *The respondent bears the costs of the instant application.*

2. The Application was supported by the Affidavit of **Joshua Sokoine Apale**, who averred that the Applicant held Burglary Insurance and All Risks Insurance policies issued by the Respondent. They were valid from 22nd August 2020 to 21st August 2021, covering items at the Applicant's business premises. During the policy period, on the night of 27th February 2021, thieves forcibly broke into the premises and stole insured items. A claim was made but the Respondent declined to indemnify the Applicant.
3. Pursuant to the arbitration clauses in the policies, the dispute was referred to arbitration before a sole arbitrator, **Ms. Nancy Manyara, MCI Arb**. She issued an award for damages that was subsequently settled by the Respondent. Thereafter, the Applicant sought determination of costs by filing a Party and Party Bill of Costs, leading to an Additional Award on Costs dated 16th July 2024. The Tribunal awarded the Applicant the assessed costs and the costs of the additional award.
4. Despite collecting the award and notifying the Respondent, it has failed to pay the costs due to the Applicant. Therefore,

the Applicant seeks recognition and adoption of the additional award to enable him to recover the amount awarded by the Arbitral Tribunal through enforcement as a decree of the Court

5. There was no response to this Application.

Issues for determination

6. Having considered the Application, the Further Affidavit and submissions by the Applicant, the following issue arises for determination:

a) Whether the Applicant's Application for recognition and enforcement of the arbitral awards is merited.

Analysis

7. In 2020, the Respondent issued the Applicant with Burglary and All Risks Insurance policies valid from 22nd August 2020 to 21st August 2021. The insured event leading to a loss occurred on the night of 27th February 2021. This is when thieves forcibly entered the Applicant's business premises

and stole the insured items. When a claim was made by the Applicant, the Respondent declined to indemnify the loss. The resulting dispute was referred to arbitration in accordance with the policy clauses.

8. This led to the appointment of **Ms. Nancy Manyara, MCI Arb** as sole arbitrator. The Arbitrator issued a final award granting damages and directing the Respondent to pay the costs of the arbitration. While the damages were paid, the Respondent failed to settle the costs. This prompted the Applicant to file a Party and Party Bill of Costs, upon which the Arbitral Tribunal issued an Additional Award on Party-to-Party Costs on 16th July 2024.

9. The Applicant seeks recognition and adoption of the additional award to enable him recover the amount awarded by the Arbitral Tribunal. This is through enforcement of the additional Award as a decree of this Court.

10. The statutory provisions that govern the enforcement of the Award are Section 36 of the Arbitration Act provides that:

1. 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.

11. The Court has perused the record and notes that the Applicant has attached the Additional Arbitral Award dated 16th July 2024 pursuant to the Award dated 1st March 2023.

12. In **Christ for All Nations v Apollo Insurance Co. Ltd, [2002] 2 EA 366**, the Court emphasized that once an arbitral award satisfies the threshold under Section 36 of the Arbitration Act, the Court is enjoined to recognize and enforce it.

13. The Additional Arbitral Award dated 16th July 2024 is hereby recognized and adopted as a decree of this Court.

14. The Applicant has filed a Further Affidavit sworn on 25th March, 2025. He pointed out that on 28th October 2024, the Respondent remitted Kshs.453,553 which payment covered

the assessed costs only. The Respondent did not settle the interest accrued during the period when the Additional Award remained unpaid. In essence, as the costs have now been paid the only amount outstanding is interest arising out of the costs. The Court hereby orders the Respondent to pay interest on the assessed costs from the date of the collection of the award and reimburse the Applicant the arbitrator's fees for the Additional Award on Party-to-Party costs along with the accrued interest as directed in the Additional Award. The rate of interest is as applicable in the Award.

Determination

15. The Court is persuaded to allow the Applicant's application by way of a Chamber Summons dated 16th October 2024 as follows;

(a) *The Additional Award on Party-to-Party Costs published by **Nancy Manyara (MCIArb)** on the 16th day of July 2024 in Nairobi be and is HEREBY recognized and adopted as a judgment of this Court.*

(b) *The Applicant be and is HEREBY granted leave to enforce the Additional Award on Party-to-Party Costs as a decree of this Court.*

(c) *The Respondent to bear the costs of the instant application.*

16. It is so ordered.

17. This file to be marked as closed.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS
12TH DAY OF FEBRUARY, 2026.**

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

..... for the Applicant.

N/A for the Respondent.

Peter Wabwire - Court Assistant.