

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

MISC COMMERCIAL APPLICATION NO. E427 OF 2025

ABDIFATAH ADAN GEDI.....1ST

CLAIMANT

MOHAMED ADAN GEEDI BOSS.....2ND

CLAIMANT

-VERSUS-

NESTER

WANJA

THEURI.....RESPONDENT

RULING

1. The Claimants filed a Chamber Summons dated 30th April 2025 seeking the following orders;

a) The Final Award published by the Honourable Arbitrator PATTERSON MUNENE KAMAARA on 27th February 225, (sic) be adopted and enforced as a Judgement and decree of this Court; and

b) The cost of this application be borne by the Respondent.

2. The Application was supported by the Affidavit of **ABDIFATAH ADAN GEDI**. He stated that the parties

entered into a sale agreement dated 29th July 2022 for Land Reference No. 29/3271/29, which contained an arbitration clause. Following a dispute, the matter was referred to arbitration under clause 18.2. The parties participated in the arbitral process, culminating in a final arbitral award dated 27th February 2025. The Arbitrator ordered the Respondent to refund Kshs.16,500,000, being the forfeited 10% deposit, within thirty days. However, the Respondent has failed, neglected, and refused to comply with the award despite repeated demands. A certified copy of the award has since been filed in Court and duly served upon the Respondent. The award is attached to the Affidavit in support to the application.

3. In response, the Respondent filed the Replying Affidavit, sworn on 31st August 2025. The Respondent averred that he has already made partial payments to the Claimants totaling 4,750,000/=, payments which they have accepted. Further, he intends to settle the outstanding balance of the award, and requires the Court's intervention to grant a structured payment plan to do so in a fair and just manner. This is given

the full circumstances of this matter and the financial strain resulting from the failed transaction.

4. He proposed to liquidate the remaining balance of Kshs.11,750,000/= by making a further down-payment of Kshs. 1,000,000/- on 15th October 2025 and thereafter a final instalment of Kshs. 10,750,000/- on 15th December 2025. This is to fully clear the balance of Kshs 11,750,000/-.

Issues for determination

5. The Court has carefully considered the pleadings and submissions filed by the parties and the issue for determination is;

- (a) *Whether the Final Award should be recognized.*
- (b) *Whether the Resultant Decree should be settled by way of instalments.*

Analysis

6. The Applicants sought to have the Final Award recognized as binding and enforced by the Court.

(a) Whether the Final Award should be recognized.

7. The recognition and enforcement of Final Awards is guided by **Section 36 of the Arbitration Act** as follows;

(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.

8. It is the Court's observation that the Applicants have complied with the provision of **Section 36 (3) of the Arbitration Act**. The certified copy of the Final Award was filed in the Court file.

9. **Section 32A of the Arbitration Act** provides that;

Except as otherwise agreed by the parties, an Arbitral Award is final and is binding upon the parties. No recourse is provided against a Final Award except as in the manner provided for under the Act.

Recourse to the High Court against the Arbitral Award is by virtue of Section 35 of the Act which provides for the Respondents to file an application for setting aside the Arbitral Award.

10. The Respondent has not challenged the Award by filing any Application seeking to set aside the Final Award. The Replying Affidavit makes averments that the Applicants are not innocent parties. That they too were to blame for the state of affairs as they were in breach of the sale agreement. The Respondent does concede that the Arbitrator did make a finding in favour of the Applicants. That an Award for the refund of Kshs.16,500,000, being the forfeited 10% deposit was made and still subsists. The Replying Affidavit cannot overturn the Award. There being no pending application before the Court challenging the award, the Court finds no reason not to recognize the Final Award as binding and enforceable.
11. The upshot of the foregoing is that the Applicant's Application of 30th April 2025 to recognize and adopt the Arbitral award of 27th February 2025 is hereby granted.

(b) Whether the Resultant Decree should be settled by way of instalments.

12. Notably, the Respondent pointed out that he has already made partial payments to the Claimants totaling 4,750,000. The Applicants did not dispute that they had received this payment. Further, the Respondent proposed to liquidate the remaining balance of Kshs.11,750,000/= by making a further down-payment of Kshs. 1,000,000/- on 15th October 2025 and thereafter a final instalment of Kshs. 10,750,000 on 15th December 2025 to fully clear the balance of Kshs.11,750,000.

13. **Order 21 Rule 12 of the Civil Procedure Rules Cap 21 of the Laws of Kenya**, that allows settlement of a Decree by instalments states as follow;

“12. Decree may direct payment by instalments [Order 21, rule 12.]

(1) Where and in so far as a decree is for the payment of money, the court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) After passing of any such decree, the court may on the application of the judgment-debtor and with the consent of the decree-holder or without the consent of the decree-holder for sufficient cause shown, order that the payment of the amount decreed be postponed or be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor or the taking of security from him, or otherwise, as it thinks fit.

14. In **Freight Forwarders Limited vs Elsek & Elsek (K) Limited (2012) eKLR** it was held that the Court could allow settlement of decretal sum by way of instalments if a debtor was unable to pay in lump sum, if the application was made in good faith and the monthly repayments were reasonable.

15. In **Keshavji Jethbhai & Bros Limited vs Saleh Abdulla [1959] EA 260 Crawshaw J** stated as follows: -

“... it is laid down that the mere fact that the debtor is hard pressed or unable to pay in full at once is not sufficient reason for granting instalments and that ordinarily should be required to show his bona fides by arguing prompt payments of a fair proportion of the

debt. We are in respectful agreement with this interpretation of the law but find great difficulty in construing the last observations in the ruling in the way desired by the counsel for the plaintiff i.e. prompt payment of a fair proportion of the debt is a condition precedent for the granting of the discretion of granting instalments. Each case has to be decided on its own merits, the predominant fact being of course the bonafides of a debtor.”

16. To grant or not the prayers for instalments calls for the exercise of discretion.
17. The provisions of **Sub Rule (2)** refer to the Court making a decision after request of an application by the Judgment Debtor. As far as matters stand, the Respondent has not moved the Court to make the orders sought. For the avoidance of doubt, an application or a request to the Court to be allowed to pay by instalments cannot be by way of a Replying Affidavit. The Court is therefore unable to consider such an order that has not been formally sought by way of an application before the Court.
18. The Court's doors remain open for a party seeking exercise of discretion to pay by instalments. However, the Court has to be moved in the appropriate manner as well as time. A decree is yet to issue so as to trigger the Application for settlement of the decree by way of instalments.

19. As to costs, the same are awarded to the Applicant.

Determination

20. The Claimants/Applicants' application by way of a Chamber Summons dated 30th April 2025 is allowed as follows;

(a) *The Final Award published by the Honourable Arbitrator **PATTERSON MUNENE KAMAARA** on 27th February 2025 be and is HEREBY adopted and enforced as a Judgement and decree of this Court;*

(b) *The cost of this application be borne by the Respondent.*

21. It is so ordered.

22. This file be marked as closed.

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

**NJOROGE BENJAMIN K.
JUDGE**

In the presence of:

Mr. Onamu holding brief for Mr. Muchangi for the Claimants/Applicants.

Mr. Onsare for the Respondent for the Respondent
Peter Wabwire - Court Assistant.