

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
HCCOMMARB NO. E003 OF 2025

**UZIMA CHICKEN
LIMITED.....APPLICANT**

VERSUS

**MULTIPLYX ENTERPRISES
LIMITED.....RESPONDENT**

JUDGEMENT

A. BACKGROUND.

1. A brief history of this matter is that a dispute pitting the parties herein was pursuant to an arbitration clause in a construction agreement dated 2nd March, 2023 between the parties referred to arbitration, whereby the Applicant herein was the Claimant, while the Respondent herein was the Respondent.

2. The parties presented their respective cases before the arbitrator **Mr. Ali Mandhry**, and on 23rd September, 2024, the arbitrator rendered his award, concluding as follows:
 1. **The Claimant is entitled to Ksh.3,421,739/- being an overpayment to the Respondent during the project term as shown in the “project cost and audit report”.**

- 2. Ksh.2,000,000/- paid to Respondent on 27th June, 2023, for purposes of achieving the revised guaranteed mechanical completion date and the revised guaranteed practical completion date, which dates were never achieved, no evidence of associated works has been provided.**
- 3. Ksh.1,186,700/- being cost of the missing construction material taken by the Respondent's representative, Engineer Oduor.**
- 4. Professional fees and/or expenses incurred prior to arbitration ("Pre-Arbitration Fees") as follows:**
 - i. Quantity surveyor audit service by Zimaki Consult Limited Ksh.363,805/-.**
 - ii. Engagement of a legal counsel from H.M.O. Josiah & Company Advocates Ksh.74,490/-.**
 - iii. Fees paid to Chartered Institute of Arbitrators (Kenya Branch) for appointment of Arbitrator Ksh.20,000/-.**
- 5. Claimant's Advocates' costs of Ksh.372,116 (confirmed by the Claimant).**
- 6. Claimant's Advocates' virtual attendance costs of Ksh.4,200/-.**
- 7. Claimant's Advocates' attendance costs at the hearing, transport Ksh.7,500/-.**
- 8. Costs of the arbitration -**
 - iv. Transport Ksh.30,900/-.**

- v. Accommodation Ksh.6,000/-.
- vi. Cost of booking conference room at Victoria Suites for the hearing Ksh.10,000/-.
- vii. Arbitrator's travelling time Ksh.30,000/-.
- viii. Arbitrator's fees Ksh.365,000/-.

9. The Respondent to pay the Claimant Ksh.7,892,450/- as awarded within 30 days after which will attract interest at court rates.

This is full and final statement of all issues put before me, the Arbitrator.

FIT FOR COUNSEL.

B. THE CHAMBER SUMMONS DATED 4TH SEPTEMBER, 2025.

3. Following the delivery of the award, the Applicant filed the application dated 4th September, 2025, expressed to be brought under *Sections 1A, 1B, 3A and 63(e) of the Civil Procedure Act, Cap 21 Laws of Kenya, Order 46 Rule 20 of the Civil Procedure Rules, 2010, Sections 36(1) and (3) of the Arbitration Act No. 4 of 1995, Laws of Kenya, Rules 4(1) and (2), 6 and 9 of the Arbitration Rules, 1997, and all other enabling provisions of the law, which seeks the following orders:*

1. [Spent].

2. THAT the arbitral award dated 23rd September, 2024 made by Mr. Ali Mandhry in the application between the Applicant and the Respondent, be and is hereby recognized and adopted as an order of the court.

3. The costs of this application be borne by the Respondent.

4. The application is supported by the affidavit of **Berhane Girmay Kassa** sworn on 4th September, 2025 and the further affidavit of **Hunter Ogola Josiah** sworn on 17th December, 2025.

5. The grounds upon which the application is premised are laid out on its face and are in precis that the parties entered into the construction agreement dated 2nd March, 2023 (annexed as HOJ-1 to the further affidavit, duly certified as a true copy of the original).

6. That following a dispute that arose between the parties in the course of execution of the agreement, a dispute arose, which fortunately, was resolved by the parties through a second agreement that the parties referred to as “amendment no.1 to the construction agreement” that the parties executed on 26th June, 2023 (annexed as HOJ-2 to the further affidavit, duly certified as a true copy of the original), whose effect was to amend the agreement of 2nd March, 2023.

7. The construction agreement, under clause 33 provided that if a dispute arose and parties were not able to resolve it, the

same would be referred to arbitration. Thus then, the instant dispute was on that basis referred to arbitration, with notice to the parties, and the arbitral award rendered on 23rd September, 2024.

8. The Applicant has *inter alia* annexed to the affidavits the construction agreement and further agreement amending the same, the arbitration proceedings and the arbitrator's final award. The Applicant's two affidavits restate and expound on the above grounds.
9. The Applicant states that the arbitral award has not been challenged by the Respondent as no application has been filed seeking to set it aside.
10. The application was served upon the Respondent to the satisfaction of this court. The Respondent did not file any response to the chamber summons.

C. ISSUES FOR DETERMINATION.

11. I have carefully examined the chamber summons dated 4th September, 2025, the supporting affidavit sworn by **Berhane Girmay Kassa**, the further affidavit sworn by **Hunter Ogola Josiah**, the documents annexed thereto, and the entire record of the arbitral proceedings placed before this court.

12. I have equally considered the applicable constitutional, statutory and decisional law governing arbitration in Kenya.

13. From this consideration, the court is of the view that the application turns on two central issues, namely: firstly, whether the Applicant has complied with the mandatory legal requirements for recognition and enforcement of an arbitral award under the *Arbitration Act, No. 4 of 1995*; and secondly, whether there exists any statutory, procedural or public policy impediment that would justify this Court declining to recognize and adopt the arbitral award dated 23rd September, 2024, as an order of the Court.

D. ANALYSIS AND DETERMINATION.

a. Compliance with the statutory requirements for recognition and enforcement.

14. The legal framework governing recognition and enforcement of arbitral awards is anchored in *Sections 36 and 37 of the Arbitration Act, No. 4 of 1995*, read together with the *Arbitration Rules, 1997*. *Section 36(1) of the Act* provides in mandatory terms that an arbitral award shall be recognized as binding and, upon application in writing to the High Court, shall be enforced, subject only to the provisions of the *Act*.

15. The legislative intent underlying this provision is to accord finality to arbitral awards and to limit judicial intervention to

only those exceptional circumstances expressly provided for by statute.

16. *Section 36(3)* of the *Act* prescribes the evidentiary threshold to be met by a party seeking recognition and enforcement. The Applicant must furnish the court with either the original arbitral award or a duly certified copy thereof, as well as the original arbitration agreement or a duly certified copy. These requirements are not cosmetic; they are intended to enable the court to satisfy itself that there exists a valid arbitration agreement between the parties and that the award sought to be enforced emanates from that agreement.

17. In the present case, the Applicant has annexed to the affidavits on record certified copies of the construction agreement dated 2nd March, 2023, the amendment no. 1 to the construction agreement dated 26th June, 2023, the record of the arbitral proceedings and the final arbitral award dated 23rd September, 2024.

18. Upon perusal of these documents, I am satisfied that the arbitral award arose from a valid arbitration clause contained in clause 33 of the construction agreement and that the dispute was properly referred to arbitration in accordance with the parties' contractual arrangement.

19. It is further evident that the arbitral proceedings were conducted with the appropriate notice of both parties,

whereby the Respondent partially participated before abandoning the proceedings with no notice to the arbitrator, who had been duly appointed, and that the award addressed all issues placed before him, culminating in a final determination expressly stated to be a full and final resolution of the dispute.

20. The Court of Appeal in **Anne Mumbi Hinga v Victoria Njoki Gathara [2009] eKLR** emphasized that where parties voluntarily submit their dispute to arbitration, courts must respect the outcome of that process unless one of the limited statutory grounds for intervention is demonstrated. I find no basis in the record to conclude that the statutory requirements under *Section 36* of the *Act* have not been met.

b. Whether there exists any impediment to recognition and enforcement.

21. Having found that the Applicant has satisfied the procedural requirements for recognition, the court must next consider whether any of the grounds for refusal of recognition and enforcement, as set out under *Section 37* of the *Arbitration Act*, have been established.

22. These grounds include, *inter alia*, incapacity of a party, invalidity of the arbitration agreement, lack of proper notice, excess of jurisdiction by the arbitrator, procedural irregularity or where enforcement would be contrary to public policy.

23. In the instant matter, the Respondent did not file any response to the chamber summons despite having been duly served. More importantly, the Respondent did not file any application under *Section 35* of the *Arbitration Act* seeking to set aside the arbitral award within the time prescribed by law. The absence of a challenge to the award is a significant consideration, as it underscores the finality of the arbitral process and limits the scope of this court's inquiry at the enforcement stage.

24. The High Court in ***Christ for All Nations v Apollo Insurance Co. Limited [2002] 2 EA 366*** cautioned that the public policy ground should be construed narrowly and should not be used as a backdoor to re-open the merits of an arbitral award.

25. Similarly, in ***Kenya Shell Limited v Kobil Petroleum Limited [2006] eKLR***, the Court affirmed that the enforcement court does not sit on appeal over the decision of the arbitrator, but merely ensures that the award meets the statutory criteria for enforcement.

26. Nothing has been placed before this court to suggest that the arbitrator acted in excess of his mandate, that the proceedings were conducted in breach of the rules of natural justice or that enforcement of the award would offend public

policy or the *Constitution*. On the contrary, the award appears to be a reasoned determination of the parties' contractual dispute, grounded in the evidence presented and within the scope of the arbitrator's jurisdiction.

27. This approach accords with *Article 159(2)(c)* of the *Constitution*, which obligates courts to promote alternative dispute resolution mechanisms, including arbitration. To decline enforcement in the absence of statutory grounds would be to undermine party autonomy and the legislative policy favouring arbitration as a final and binding mode of dispute resolution.

E. CONCLUSION AND ORDERS.

28. In light of the foregoing analysis, I am satisfied that the Applicant has demonstrated entitlement to the orders sought and that there exists no legal impediment to the recognition and enforcement of the arbitral award dated 23rd September, 2024.

29. Consequently, the chamber summons dated 4th September, 2025 is hereby allowed. It is hereby ordered:

- a. **THAT the arbitral award dated 23rd September, 2024 made by Mr. Ali Mandhry be and is hereby recognized and adopted as the judgement of this court pursuant to *Section 36 of the Arbitration Act.***

b. THAT the costs of the application shall be borne by the Respondent, which I take the liberty of assessing at Ksh.4,000/-.

30. This file is hereby marked as closed.

31. Orders accordingly.

DELIVERED (virtually), DATED & SIGNED this 9th day of February, 2026.

JOE M. OMIDO.

JUDGE

FOR APPLICANT: **Mr. Josiah.**

FOR RESPONDENT: No appearance.

COURT ASSISTANTS: **Mr. Ngoge & Mr. Juma.**