

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL AND TAX DIVISION**

**COMM. CASE NO. E413 OF 2024 AND COMM. CASE NO. E653**

**OF 2025**

**BETWEEN**

**BEVAJ**

**FURNITURE**

**LIMITED.....APPLICANT**

**AND**

**AISHA**

**JUMWA**

**KARISA**

**KATANA.**

**.....RESPONDENT**

**RULING**

**Introduction and Background**

1. By an arbitral award dated 22<sup>nd</sup> May 2025, SEAN OMONDI (“the Arbitrator”) ordered the Respondent to pay the Applicant Kshs.60,000,000.00/= being the balance of the purchase price under a Sale Agreement dated 13<sup>th</sup> March 2023 for the sale and purchase of a property being Title No. 126723, L.R No. 7785/951(Original No. 7785/10/689) situated in Nairobi City (“the Award”). By applications dated 25<sup>th</sup> September 2025 and 28<sup>th</sup>

October 2025, the Respondent and the Applicant respectively seek to set aside and enforce the Award. The two applications were heard together and canvassed by way of written and oral submissions by their parties' counsel which I have considered and I will be making relevant references to the same in my analysis and determination below.

## **Analysis and Determination**

2. In response to the application for setting aside the award, the Applicant relied on the replying affidavit of its director, ROSALINE WAMBUI sworn on 16<sup>th</sup> October 2025. I note that it raises a preliminary point that the Respondent's application is fatally defective as it is brought more than three months after the Award was served and notified to the Respondent. This objection is based on **section 35(3)** of the ***Arbitration Act(Chapter 49 of the Laws of Kenya)*** ("the **Act**"), which provides that an application for setting aside an arbitral award "*....may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award...*"
3. In **University of Nairobi v Multiscope Consultancy Engineers Limited [2020] KEHC 9696 (KLR)** Tuiyott J., (as he was then) took the view that a notice to the parties that an award is ready for

collection is sufficient delivery and receipt of the award. This court has pronounced itself on the same and it appears settled that delivery does not mean physical or actual delivery of the Award but notification by the Arbitrator that it is ready for collection (see **Dinesh Construction Limited & another v Aircon Electra Services (Nairobi) Limited [2021] KEHC 6762 (KLR), Lantech (Africa) Limited v Geothermal Development Company [2020] KEHC 10419 (KLR) and MAHINDER SINGH CHANNA v NELSON MUGUK & another [2007] KEHC 2401 (KLR)**)

4. As submitted by the Applicant, the Respondent concedes in her application that she was informed by the firm of *Messrs. Prof. Tom Ojienda and Associates* that they had received a letter dated 22<sup>nd</sup> May 2025 from the Arbitrator that the Award was ready for collection upon payment of his fees. It follows that the Respondent ought to have filed her application by 22<sup>nd</sup> August 2025, latest meaning the present application has been filed out of time. An application under **section 35** that is time barred is fatal and there is no provision in the **Act** that can salvage such an application either by seeking leave or otherwise (see **University of Nairobi v Nyoro Construction Company Limited & another [2021] KEHC 380 (KLR)**). I am in agreement with the Applicant's submission that this position was buttressed by the Court of Appeal

in **Anne Mumbi Hinga v Victoria Njoki Gathara [2008] KECA 30 (KLR)** where it was stated that, “*Section 35 of the Arbitration Act bars any challenge even for a valid reason after 3 months from the date of delivery of the award.*”

5. As such, I find merit in the objection raised by the Applicant and the Respondent’s Notice of Motion dated 25<sup>th</sup> September 2025 seeking to set aside the Award is hereby struck out for being time-barred pursuant to **section 35(3)** of the **Act**.
6. Even if I am to assume that the Respondent’s application is properly before the court, I do not buy her claim that she did not participate in the arbitration and that Prof. Ojienda's firm was not representing her. It is not in dispute that that the Respondent was represented by Prof. Ojienda’s firm alongside another firm in prior court proceedings related to the same dispute, specifically **HCCOMM Insolvency Petition No. E067 of 2024** and **HCCOMM E413 OF 2024** where the firm formally came on record for her, filing a Notice of Appointment and an application to refer the matter to arbitration. The Respondent has not denied the Applicant’s deposition that she attended preliminary arbitration meetings on 24<sup>th</sup> January 2025 and 4<sup>th</sup> February 2025 and that the firm of Prof. Tom Ojienda was re-appointed and appeared for her. It has not been denied that a Ms. Cecilia Misiati an Advocate from Prof.

Ojienda's office, was copied in all correspondences and email notices. Ms. Misiati Advocate also attended the hearing of the present motion despite informing the Court that her firm had no instructions to represent the Respondent in the proceedings.

7. The email threads provided by the Respondent indicates that the Arbitrator, consistently addressed all correspondence to Mr. Kirimi for the Applicant and Ms. Cecilia Misiati for the Respondent, whose email is misiat\*\*\*\*\*5@gmail.com, which is associated with *Prof. Tom Ojienda & Associates*. Ms. Misiati received and acknowledged multiple "Orders for Directions" from the Arbitrator and the emails reference virtual meeting links and transcripts for hearings, including one on 10<sup>th</sup> April 2025, in which Ms. Misiati participated. On 5<sup>th</sup> September 2025, the Applicant, through its counsel, filed a Bill of Costs. On 19<sup>th</sup> September 2025, *Prof. Tom Ojienda & Associates* sent an email to the Arbitrator and all parties, attaching the "RESPONDENT'S SUBMISSIONS IN OPPOSITION TO THE BILL OF COSTS" which is a clear act of participation in the proceedings after the Award was rendered.
8. The emails show that the Respondent did not pay her share of the arbitrator's deposit and consequently, the Applicant paid an additional Kshs.150,000.00/= to cover the Respondent's shortfall.

This demonstrates that the Respondent was aware of the proceedings but failed to fulfill her financial obligations.

9. From the above, it is my finding that the Respondent participated in the arbitration through her counsel and even opposed the bill of costs after the Award and she is therefore estopped from now alleging a lack of participation or awareness. It is trite that an advocate on record has the proper authority to act for their client and the Respondent has failed to provide any cogent evidence to rebut this presumption. I am in agreement with the Applicant's position that by remaining silent and allowing her advocate to act throughout the arbitral process, the Respondent had effectively acquiesced to and ratified the advocate's authority. I affirm that the Arbitrator complied with **section 32** of the **Act**, and the Award was properly rendered. The Respondent's attempt to distance herself from her chosen legal representatives is nothing more than a strategic move to create grounds to set aside the arbitral award under **section 35** of the **Act**. This attempt is halted at this point and the application is dismissed.

10. Turning to the Applicant's application for recognition and enforcement of the Award, having struck out and dismissed the application to set aside the same on both technical and substantive grounds, it follows that nothing stops the Award from being

recognized and enforced as an order of the court under **section 36** of the **Act**.

### **Conclusion and Disposition**

11. In the upshot, the Respondent's application dated 25<sup>th</sup> September 2025 is dismissed. The Applicant's application dated 28<sup>th</sup> October 2025 is allowed on terms that the Final Award published by SEAN OMONDI on 22<sup>nd</sup> May 2025 and the Final Award on costs dated 28<sup>th</sup> October 2025 are hereby recognized as binding and leave is hereby granted to the Applicant to enforce the said Arbitral Awards as orders and decrees of this court. The Respondent shall bear the costs of both applications assessed at Kshs.70,000.00/=. It is so ordered.

**DATED SIGNED and DELIVERED virtually at NAIROBI this 2<sup>nd</sup>  
DAY OF MARCH 2026**

.....  
**J.W.W. MONGARE**  
**JUDGE**

### **IN THE PRESENCE OF**

1. Mr. Kirimi for the Plaintiff for the Applicant- Bevaj Furniture Limited.

2.Mr. Ashioya holding Brief Mr. Nelson Havi SC for the  
Respondent-Aisha Jumwa Karisa.

3.Amos - Court Assistant

ORIGINAL