



**Total Steward Services Limited v Bar Next Door Ventures Limited (Arbitration Cause E084 of 2024) [2026] KEHC 3122 (KLR) (Commercial and Tax) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3122 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
ARBITRATION CAUSE E084 OF 2024**

**F GIKONYO, J**

**MARCH 5, 2026**

**BETWEEN**

**TOTAL STEWARD SERVICES LIMITED ..... APPLICANT**

**AND**

**BAR NEXT DOOR VENTURES LIMITED ..... RESPONDENT**

**RULING**

1. Before the court is the applicant's notice of motion dated 21.11.2024 made primarily under sections 36 and 37 of the *Arbitration act*.
2. The applicant seeks the recognition and adoption of the arbitral award dated 10.9.2024 and the additional arbitral award dated 8.11.2024 by Sole Arbitrator, Hon. Doreen Kibia as a judgment of this court.
3. The applicant also seeks entry of judgment in its favour against the respondent in the following terms: -
  - a. Payment of the awarded amount in the sum of Kshs. 1,296,132.15/- with simple interest at the rate of 17.5% per annum from March 2024 until payment in full.
  - b. Payment of the awarded cost of arbitration and as fully settled by the applicant in the sum of Kshs. 358,800/- with interest at the simple rate of 17.5% per annum from 12.11.2024 until payment in full.
  - c. Payment of the taxed costs of the Arbitration proceedings in the sum of Kshs. 218,679.80/-.
4. The application is premised on the grounds on the face of the application and the affidavit sworn by the applicant's managing director, Pascal Omondi on 21.11.2024 and 9.4.2025.
5. Condensed and rephrased, the grounds are: -



1. The parties mutually referred the dispute between them for arbitration following which the arbitrator delivered the final award dated 10.9.2024 in the terms set out in para. 3 (a) and (b) above.
2. The parties agreed that costs of the arbitral proceedings be taxed by the Hon. Arbitrator and she was invited to tax the costs through the bill of costs dated 28.9.2024. She rendered an additional award dated 8.11.2024 ordering the respondent to pay the applicant's costs assessed at Kshs. 218,679.81/-.
3. The respondent has not settled any of the awards and the applicant intends to enforce the award.
4. It is in the interests of justice that the application be allowed.
6. The respondent opposed the application through a replying affidavit sworn by Raphael Mbaya Murangiri on 30.1.2025. It urged the court to decline to enforce the award and set it aside in its entirety.
7. The respondent's core contentions are: -
  1. The arbitrator acted beyond the scope of her jurisdiction by awarding punitive costs.
  2. The interest rate of 17.5% per annum on the awards and the costs is punitive, unreasonable and against public policy under section 37 (2) (b) (ii) of the *Arbitration Act*.
  3. The arbitrator did not address its clarifications sought regarding the awards and the costs thus violating its right to fair hearing. The applicant went on to pay the costs without notifying it. The award on costs does not contain reasons contrary to the *Arbitration Act*, the rule of law and *the Constitution*.
8. The respondent stated that in good faith it started making payment to the tune of Kshs. 1,500,000/- and was continuing to clear the rest of the amount. It was therefore surprising that the applicant pressed for arbitration to proceed disregarding its acts of good faith. It contended that once he had made an offer to pay and made some payments as acts of good faith, the arbitrator should not have loaded punitive costs upon it.

### **Submissions**

9. The applicant and the respondent filed written submissions dated 9.4.2025 and 16.7.2025.
10. The applicant relied on *Matrix Business Consultants Limited & 4 others v Safaricom Limited* [2020] KEHC 8441 (KLR) on what the courts consider in determining whether arbitral awards are against public policy.
11. The applicant submitted that interest of 17.5% was justified and based on sound policy as it was anchored on the parties' agreement. It highlighted that under clause 5 of the agreement, interest on unpaid invoices was chargeable at the rate of prevailing 91 Treasury Bill rate per annum until the date of payment. It also pointed out that the respondent did not submit on the issue before the arbitrator despite the opportunity afforded.
12. The applicant disputed the contention that the arbitrator acted beyond her scope of powers by taxing the bill of costs and awarding it costs. It referred to Order for Direction Number 1, asserting that the respondent willingly submitted to the arbitral process, was represented by counsel throughout and did not seek to challenge the arbitrator's powers.



13. The applicant contested the respondent's proposition that the arbitrator should not have made an award against it because it had acknowledged the amounts due and made partial payments. It contended that the respondent is trying to use the judicial system to frustrate it.
14. The applicant submitted that there is no reason why the court should refuse recognition and enforcement of the award. It posited that the respondent is inviting the court to sit on appeal in respect of the arbitrator's decision which invitation must be rejected.
15. The applicant relied on Mahican Investments Limited & 3 others v Giovanni Gaida & 80 others [2005] eKLR to the effect that the court will not interfere with an arbitrator's decision even if it is a misinterpretation of a contract and that to interfere would place the court in the position of a court of appeal which is not the intention of the *arbitration act*.
16. The respondent disputed the applicant's assertion that it consented to the arbitrator to sit as the taxing master.
17. The respondent argued that the arbitrator exceeded the scope of reference to arbitration under section 32 (c) of the *Arbitration act* by awarding punitive costs not justifiable by the Act and Rules.
18. The respondent relied on Synergy Credit Limited v Cape Holdings Limited NRB CA Civil Appeal No. 71 of 2016 [2020] eKLR on the elements to be considered in determining whether the award contains decisions on matters beyond the scope of the reference to arbitration.
19. The respondent also relied on Teejay Estates Limited v Vihar Construction Limited [2022] KEHC 121 (KLR) where the court observed that an arbitrator must conduct himself in a manner that does not destroy the confidence of the parties, or either of them.
20. The respondent further relied on Christ for All Nations v Apollo Insurance Co. Ltd [2002] 2 E.A. 366 and Glencore Grain Ltd v TSS Grain Millers Ltd [2002] 1 KLR 606 on when an award will be against public policy.

### **Analysis and Determination**

21. Section 36 of the *Arbitration Act* provides that: -

“ 36. Recognition and enforcement of awards

- (1) A 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.”



22. The applicant exhibited a copy of the final arbitral award of 10.9.2024 and the additional award of 8.11.2024. It also exhibited a copy of the contract dated 17.9.2021 between the parties containing an arbitration agreement under clause 11.
23. There are two main contentions raised by the respondent in opposing the application for recognition and enforcement of the subject award. These are: -
  1. The arbitrator acted outside the scope of her powers under the arbitration agreement.
  2. The interest of 17.5 is against public policy under section 37 (2) (b) (ii) of the Arbitration Act
24. The grounds for refusal of recognition or enforcement of an arbitral award are set out under section 37 of the Arbitration act.

### **Jurisdiction**

25. The first ground on jurisdiction is anchored on section 37 (1) (a) (iv), which provides that recognition and enforcement of an arbitral award may be refused if: -
  - “(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration, or it contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, that part of the arbitral award which contains decisions on matters referred to arbitration may be recognised and enforced;”
26. The respondent contended that it did not consent to the arbitrator sitting as the taxing master. It also contended that the arbitrator exceeded the scope of reference to arbitration by awarding punitive costs not justifiable by the Act and Rules.
27. On the other hand, the applicant asserted that by taxing the bill of costs and awarding costs the arbitrator acted in accordance with her jurisdiction. It referred to Order for Direction Number 1, asserting that the respondent willingly submitted to the arbitral process, was represented by counsel throughout and did not seek to challenge the arbitrator’s powers.
28. Para. 1.17 of the Order for Direction Number 1 dated 14.12.2023 states that the arbitrator shall be the taxing master of these arbitral proceedings.
29. Under section 17 (3) of the Arbitration act, a plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. Kenya Tea Development Agency Ltd & 7 others v Savings Tea Brokers Limited [2015] KEHC 6030 (KLR)
30. There is no evidence that the respondent challenged before the arbitrator her jurisdiction to tax the costs.
31. Therefore, the ground that the arbitrator exceeded the scope of her jurisdiction by taxing the costs is unfounded and fails.



## Excessive interest rate

32. The second ground on punitive and excessive interest rate is anchored on 37 (1) (b) (i) Arbitration act which states that recognition and enforcement of an arbitral award may be refused if: -

“(ii) the recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya.”

33. The respondent argued that the interest rate of 17.5% per annum on the awards and the costs is punitive, unreasonable and against public policy and section 32 (c) of the arbitration act.

34. Conversely, the applicant asserted that interest of 17.5% was justified and based on sound policy as it was anchored on the parties' agreement.

35. In *Christ for All Nations v Apollo Insurance Co. Ltd* [supra], Ringera J. (Rtd.) observed that: -

“Public policy is a broad concept incapable of precise definition. 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 any other law of Kenya whether written or unwritten, or

(b) inimical to the national interest of Kenya,

(c) contrary to justice and morality”.

36. Clause 5 of the agreement provides that: -

“5. Payment Terms

All invoices should be honoured within Fourteen (14) days from the date of invoice. Total Steward Services Limited shall, at its discretion, charge interest on the outstanding amount after the due date at the rate of the prevailing 91-day Treasury bill rate per annum until the date of payment.”

37. The applicant claimed interest of Kshs. 281,569.01/- being the interest on the unpaid invoices issued in August 2022, June to October 2023. All these invoices fell due on diverse dates and the applicant claimed interest of 17.5% for the sum due.

38. The interest rate of 17.5% across all the invoices is not aligned to the prevailing 91-day Treasury bill rates applicable when the respective invoices fell due.

39. The arbitrator considered the amount that was unpaid and the interest sought. She also noted that the respondent had paid Kshs. 1,500,000/-. She therefore determined that: -

“The Respondent shall, within thirty (30) days of the date of publication of this award, compensate the claimant the balance of the principal amount due on account of unpaid invoices plus the interest on the amount due on account of unpaid invoices (as calculated as of the date of filing plus the amount accrued upon partial payment in March 2021) amounting to Kshs, 1,296,132.15/- shall be subject to the interest rate of 17.50% per annum from March 2024 until payment in full. This calculation has been based on the sum of



figures below minus the payment of Kshs. 1,500,000/- made by the Respondent in March 2024:

- i. The principal amount due on account of unpaid invoices amounting to Kshs. 2,460,360/-
- ii. The interest due on the amount calculated as at the date of filing as Kshs. 218,569.01/-
- iii. The interest of the principal amount due, plus the interest of the amount due as of the date of filing (i and ii above) from the date of filing the statement of claim until partial payment by the respondent in March 2024 when the respondent made a partial settlement of Kshs. 1,500,000/- at the simple interest of 17.5% per annum. The interest accrued as of March 2024 is Kshs. 117,203.14/-”

40. I do note that the respondent claimed that the interest rate of 17.5% across all the invoices is not aligned to the prevailing 91-day Treasury bill rates applicable when the respective invoices fell due.
41. The arbitrator made two relevant findings of facts after hearing the parties; i) the principal amount due on account of unpaid invoices; and ii) interest due on the amount calculated as at the date of filing the claim. These findings were based on the evidence tendered and the terms of the contract. In particular, the prevailing 91-day Treasury bill rates applicable to the contract was ascertainable during the hearing.
42. Ordinarily, a court should be slow to interfere with such factual findings by the arbitrator unless they are based on no evidence or on wrong principles of law.
43. There is nothing that shows that the interest as calculated and presented in the claim was not in line with the terms of the contract or that it was usurious as to make it unlawful, and therefore, contrary to public policy.
44. The arbitrator was careful to award interest on the award sum from the date of filing the claim. She also considered the payment made. The arbitrator did not commit any error of principle.

### **Right to a fair hearing**

45. The respondent complained that the arbitrator did not address its clarifications sought regarding the awards and the costs thus violating its right to fair hearing. It faulted the applicant for proceeding to pay the costs without notifying it. It contended that the additional award on costs does not contain reasons contrary to the Arbitration Act, the rule of law and the Constitution.
46. At para. 2 of the additional award; the arbitrator noted that the respondent did not file a response to the claimant’s party and party bill of costs. She found that since the bill of costs was unopposed, neither party filed submissions on the same.
47. The respondent participated in the arbitration proceedings and was represented by counsel. It did not exhibit any evidence of the clarifications that were allegedly sought and ignored by the arbitrator.
48. Therefore, there is no evidence that the arbitrator violated the respondent’s right to fair hearing.
49. The respondent claimed that once he had made an offer to pay and made some payments as acts of good faith, the arbitrator should not have loaded punitive costs upon it.



50. The arbitrator noted at para. 51 b as follows: -

“As to the general damages, the Respondent has not been high-handed, outrageous or oppressive during these arbitral proceedings based on the criteria outlined by the Claimant in paragraph 44 above. I shall employ the reasoning in the authorities stated in paragraph 45 above and, in particular, the fact that the Respondent avers to make good the monies owed and that it paid a fair proportion of the debt. In light of the foregoing, I deem it appropriate not to issue general damages to the Claimant.”

51. From the above, the arbitrator did appreciate that the respondent had settled a fair portion of the debt and did not award the applicant any general damages for breach of contract.

52. The arbitrator cannot be faulted in this regard.

### **Disposal**

53. In conclusion, the application dated 21.11.2024 is allowed in the following specific terms: -

- a. The arbitral award dated 10.9.2024 and the additional arbitral award dated 8.11.2024 by Sole Arbitrator, Hon. Doreen Kibia are hereby recognized and adopted as a judgment of this court and shall be so enforced.
- b. Given the circumstances of the case, each party shall bear own costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 5<sup>TH</sup> DAY MARCH, 2026**

**F. GIKONYO M**

**JUDGE**

In the presence of: -

Maina for Applicant

Mutea for Respondent

CA- Ivan/Aggrey

