



Nyoro Construction Company Limited v Principal Secretary (PS) Ministry of Transport, Infrastructure, Housing, Urban Development, and Public Works (Miscellaneous Civil Application E078 of 2025) [2026] KEHC 3247 (KLR) (Commercial and Tax) (23 February 2026) (Ruling)

Neutral citation: [2026] KEHC 3247 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E078 OF 2025
BK NJOROGE, J
FEBRUARY 23, 2026

BETWEEN

NYORO CONSTRUCTION COMPANY LIMITED APPLICANT

AND

**THE PRINCIPAL SECRETARY (PS) MINISTRY OF TRANSPORT,
INFRASTRUCTURE, HOUSING, URBAN DEVELOPMENT, AND PUBLIC
WORKS RESPONDENT**

RULING

1. This matter comes up for a Ruling in respect of the Applicant's application by way of an Originating Notice of Motion dated 8th September 2025.

Background Facts

2. The application that seeks the following orders:
 1. That the Honourable Court be pleased to recognise and adopt as judgment the Arbitral Award published by the Sole Arbitrator Eng. Odhiambo Aluoch dated 16th October 2023 and Additional Award on Costs dated 20th March 2024, being:
 - a. Award sum to Claimant of Kshs.145,321,963.14 to be paid within 21 days of the date of the Award, being 6th November 2023, together with compound interest at the rate 16% per annum, up until payment in full.



- b. Costs of Kshs.5,893,354.88 together with simple interest thereon at the rate of 15% per annum 30 days from the date of publication of the Additional Award, being 19th April 2024.
2. That costs of this suit, application be awarded to the Applicant.
3. The Application was supported by the affidavit of Richard Mutiso sworn on 8th September 2025. He deponed that he was an Advocate representing the Applicant. His client had been granted a construction for the rehabilitation of selected roads in Gikomba Nairobi.
4. A dispute over payment had been referred to Engineer Odhiambo Aluoch as a Sole Arbitrator. After hearing the parties, the Sole Arbitrator published an award dated 16th October, 2023. He awarded the Applicant a sum of Kshs.145,321,963.14 payable by the Respondent. Payment was to be within 21 days of the Award (i.e 6th November 2023). Interest was awarded at a compounded rate of 16% per annum until payment in full.
5. The Sole Arbitrator also published an additional Award on costs dated 20th March 2024. The Applicant was awarded Kshs.5,893,354.88 together with interest at 15% per annum. This was to accrue within 30 days from the date of Publication (i.e. from 19th April 2024).
6. The Applicant seeks to confirm the award.
7. The application is not opposed.

Issues for Determination

8. The Court has considered the application and frames the single issue for determination as follows:
 - a) Whether the Arbitral Award dated 16th October, 2023 and the Additional Award on costs dated 20th March 2024 should be recognized and adopted as a judgment of this court.

Analysis

9. Under Section 36 of the *Arbitration Act*, the High Court has the power recognise and enforce domestic arbitral award in the following terms;
 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.
10. In *Samura Engineering Limited vs Don-woods Company Limited* [2014] eKLR it was held as follows:

“Of course, section 36(1) of the Act requires an application in writing for recognition and enforcement of an award to be made. But, the application is subject to sections 36 and 37 of the Act, and I should add, to *the Constitution*. Section 36(3) of the Act makes it mandatory that the party applying for recognition and enforcement of the award should file;

 - 1) the duly authenticated original award or a duly certified copy of it; and
 - 2) the original arbitration agreement or certified copy of it. Doubtless, the award must be filed.”
11. Section 36 on the recognition and enforcement provides as follows:



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) An international arbitration award shall be recognised as binding and enforced in accordance to the provisions of the New York Convention or any other convention to which Kenya is signatory and relating to arbitral awards.
- (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.

12. Though the awards sought to be enforced have been annexed to the affidavit in support of the application, the contract signed by the parties said to be dated 17th May 2012 was not annexed. This contract is said to contain the Arbitration clause. The Court has not seen the basic document upon which the Arbitral process was hinged upon. The law requires that the Court has sight of this mandatory documents. This is the requirement of Section 36 (2) (b) of the *Arbitration Act*.

Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement must furnish—

13. The Court notes that in the past, Court would have proceeded to decline the orders sought.

14. However, the Court is minded to exercise its discretion in the matter. The Section allows the Court to waive the requirement for production of the Awards and the Agreement itself. A case in point is if the parties are not in dispute as to the existence of the documents. However, good practice and procedure would dictate that these documents be availed to the Court so that they form part of the record. If the application is merited on the face of it, save for production of the documents, the Courts may decline to dismiss the application. Rather, the Courts may grant the Applicants an opportunity to avail the documents that are said to be missing. This being an issue of discretion, this is not a first-hand rule. Each case will be determined on its own unique facts and circumstances before the Court. The Court follows the decision of Mshilla J. in *Said & another v Banda Homes Limited* [2022] KEHC 14265 (KLR). The Court stated as follows;

“The Applicant has annexed to the Summons a certified copy of the Final Arbitral Award (Annexure ‘AST-1’). However, the Applicant did not annex a copy of the Arbitral Agreement as required under Section 36(3)(b). The Applicant has therefore not met the conditions requisite for the recognition of the Arbitral Award.

Findings and Determination

In light of the foregoing this court makes the following findings and determinations;

- i. The application is found to have merit and it is hereby allowed.
- ii. The court hereby directs the Applicant to file the original Arbitration Agreement with the Court through Deputy Registrar Commercial & Tax Division within 14 days from the date hereof;



iii. Upon compliance the order of recognition and enforcement of the Arbitral Award dated January 15, 2021 by Arbitrator Prof. Paul Musili Wambua shall be deemed to be granted.”

15. In the case before the Court the application is not opposed. The Applicant should avail a certified copy of the contract dated 17th May 2012, before the Deputy Registrar of this Court through a Supplementary Affidavit, before any orders in favour of the Applicants are presented for confirmation.
16. The Court is persuaded that on the face of it that the application is meritorious.
17. The Applicant’s Counsel informed the Court from the virtual Bar, that their client is willing to forgo costs. The Court therefore directs that there be no orders as to costs as to these proceedings.

Determination

18. That the Applicant’s application by way of an Originating Notice of Motion dated 8th September 2025 is allowed in the following terms;
 1. That the Court HEREBY directs the Applicants to comply with the provisions of Section 36 (3) (b) of the *Arbitration Act* within the next Fourteen (14) days from the date hereof. This is by availing a certified copy of the contract dated 12th May, 2012 for verification before the Deputy Registrar of the Commercial & Tax Division. Failure to do so within the stipulated time, the application shall stand struck out for none compliance.
 2. That upon compliance with Order 1 above, the Honourable Court hereby recognises and adopts as judgment the Arbitral Award published by the Sole Arbitrator Eng. Odhiambo Aluoch dated 16th October 2023 and Additional Award on Costs dated 20th March 2024, being:
 - a) Award sum to Claimant of Kshs.145,321,963.14 to be paid within 21 days of the date of the Award, being 6th November 2023, together with compound interest at the rate 16% per annum, up until payment in full.
 - b) Costs of Kshs.5,893,354.88 together with simple interest thereon at the rate of 15% per annum 30 days from the date of publication of the Additional Award, being 19th April 2024.
 3. That there be no orders as to cost.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 23RD DAY OF FEBRUARY, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of:

Mr. Mutiso for the Applicants.

N/A for the Respondents.

Peter Wabwire - Court Assistant.

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