



SBI International Holdings (Kenya v Kenya National Highways Authority (Civil Case E287 of 2022) [2026] KEHC 2854 (KLR) (Commercial and Tax) (26 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2854 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E287 OF 2022
F GIKONYO, J
FEBRUARY 26, 2026**

BETWEEN

SBI INTERNATIONAL HOLDINGS (KENYA PLAINTIFF

AND

KENYA NATIONAL HIGHWAYS AUTHORITY DEFENDANT

JUDGMENT

1. The plaintiff instituted this suit by way of a plaint dated 28th March 2022 seeking entry of judgment against the defendant for: -
 - a. Kshs. 201,323,929.01, as ordered by the Dispute Board in decision of 13th January 2022, corrected on 19th January 2022;
 - b. Financing charges on any outstanding sums in (a) as above as ordered by the Dispute Board in decision of 13th January 2022, corrected on 19th January 2022, at the rate of 3% above Central Bank of Kenya Base Lending rate per annum from 28th January 2022 until payment in full; and
 - c. Costs of the suit.
2. The plaintiff's case is that through an Agreement dated 17th May 2016, the defendant engaged it to carry out road construction works for dual of Kisumu Boys Roundabout particularized as Contract No. KeNHA/RD/SP/1912/2016, (JnA1/B1)- Mamboleo Junction particularized as (JN A1/C34) Road A1. This followed the defendant's acceptance of having accepted its bid for a tender issued for the execution and completion of the said works and the remedying of any defects therein.
3. The plaintiff averred that it performed the contract as specified and became entitled to payment and or incidental relief. That, however, the defendant disputed the payment or incidental relief. That it



therefore, in accordance with the contract, referred the dispute to the Dispute Board, comprising of one adjudicator, Mr. John Papworth of Shapwick, England.

4. The plaintiff further averred that the Dispute Board, duly heard the dispute referred by it under the contract and rendered its decision on 13th January 2022, and corrected the same for clerical and mathematical errors on 19th January 2022, awarding it:
 - a. the sum of Kshs. 201,323,929.01 being financing charges on the amounts determined in the DB decisions, accrued during the period until 31st October 2021, within 14 days of the decision of Dispute Board; and
 - b. The financing charges under (a) above to bear financing charges in the manner described in section 7.1 of the DB decision until payment in full.
5. The plaintiff contended that the 14 days lapsed on 2nd February 2022 and that the defendant has not paid the sums determined and is therefore in breach of the contract. According to the plaintiff, the particulars of breach of contract are a. Failing to pay the Plaintiff the sum of Kshs. 201,323,929.01, as determined by the Dispute Board in determination of 13th January 2022, and corrected on 19th January 2022, with financing charges thereon.
6. The plaintiff highlighted that while the defendant filed a Notice of Dissatisfaction reserving the right to appeal the decision of the Dispute Board to arbitration, the defendant has never taken out any arbitration proceedings, and accordingly, there is no arbitral award in existence that has upset the binding determinations of the Dispute Board.
7. The plaintiff submitted that the defendant has benefitted from its services and that it would be unjustly enriched by declining to pay the consideration. That therefore, the court ought to issue judgment against them to forestall that.
8. The defendant filed a memorandum of appearance dated 26th May 2023. It simultaneously filed an application for stay of proceedings pending the determination of the dispute through arbitration and enlargement of time to file a defence. Through a ruling dated 18.10.2024, the court found that the defendant's application could not be entertained as the doctrine of res judicata was applicable. This is because similar applications raising similar issues had been determined by the late Hon. Majanja J. in HCCC E075 of 2020 and Hon. Mativo J as he then was in Case No.s E374, E375, E377 and E968 and E967 of 2021.
9. The failed to file the defence. The plaintiff filed a request for judgment dated 18th October 2024.
10. Interlocutory judgment was entered against them on 21st March 2025 and the matter was referred to this Court for formal proof hearing in relation to prayer (b) only.

Evidence

11. At the hearing, the plaintiff called its director, Gilad Mishni as PW1. He produced his witness statement dated 28th March 2022 (PEXh1), similar to the plaint, as his evidence in chief. He also produced the plaintiff's list and bundle of documents also dated 28th March 2022 (PEXh. 2).
12. Upon cross examination by Mr. Kalume for the defendant, Mr. Gilad stated that he does not recall receiving a notice of dissatisfaction of the award issued by the defendant. He stated that he was not aware of HCCC E075 of 2020. He stated that the contract provided for agreed interest rates for the US Dollar and Kenyan Shillings portions. He confirmed that the plaintiff received partial payments through interim payment certificates but claimed that the items paid for were not specified.



13. In re-examination, Mr. Gilad stated that the DB award was specific in the amount payable to the plaintiff and awarded financial charges on the award. He also stated that under clause 14.8 of the agreement, financial charges ought to be paid in respective currencies of delayed payments. He claimed that the award is in Kenya Shillings and that the rate of interest is 3%.

Analysis and Determination

14. The issue is whether the plaintiff is entitled to prayer b.

15. Section 107 of the *Evidence Act* provides: -

“ 107 Burden of Proof

- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
- (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.”

16. In *Daniel Toroitich Arap Moi v Mwangi Stephen Muriithi & Another* (Civil Appeal No. 240 of 2011) [2014] eKLR, the Court of Appeal observed: -

“It is a firmly settled procedure that even where a defendant has not denied the claim by filing a defence or an affidavit or even where the defendant did not appear, formal proof proceedings are conducted. The claimant lays on the table evidence of facts contended against the defendant. And the trial court has a duty to examine that evidence to satisfy itself that indeed the claim has been proved. If the evidence falls short of the required standard of proof, the claim is and must be dismissed. The standard of proof in a civil case, on a balance of probabilities, does not change even in the absence of rebuttal by the other side.”

17. The plaintiff produced the Contract Agreement, dated 17th May 2016 and the decision of the Dispute Board issued on 13th January 2022 and corrected on 19th January 2022.

18. At page 177 and 178 of the plaintiff's bundle, the DB's decision reads in part: -

“7. 2.4 The Rates

The rate to be used in stated in Sub-Clause 14.8 to be:

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discounted rate of the central bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

The Particular Conditions do not state otherwise.

7. 2.4.2 The Positions of the Parties

In support of his claim in respect of local currency, the Contractor uses the Central Bank by-monthly published rate on the Central Bank of Kenya webpage. They vary from 9% at the beginning of the period shown in March 2019, down to 7% in September 2021.



The Contractor uses the previous month's rate for the unpublished monthly rates.

The Contractor adds the stipulated 3% to arrive at the rate for financing.

There has been no objection by the Employer to the use of the Central Bank Rates and my evaluation matches the Contractor's. Therefore, in respect of financing charges for the local currency, I allow the amount as requested and detailed in the Excel file received from the Contractor."

"...my decision is that: -

- c) The Employer shall pay to the Contractor within 14 days of the date of this decision Kshs. 201,323,929.01, being financing charges on the amounts determined in the DB Fifth and Sixth decisions, accrued during the period until 31 October 2021.
- d) The financing charges under (a) above shall bear financing charges in the manner described in section 7.1 of this decision until payment in full."

19. The Contract Agreement dated 17th May 2016 provided for dispute resolution mechanism. The decision of the Dispute Board issued on 13th January 2022 and corrected on 19th January 2022 has not been challenged in accordance with the contract agreement of the parties or set aside by the court. It is therefore final and binding upon the parties. It is profitable to state that, unless there are outstanding issues not resolved by the decision, such decision should be enforced without the requirement of filing a substantive suit. See article 159(2)(c) of *the Constitution*.
20. From the above, I find that the plaintiff is entitled to prayer (b).
21. In conclusion, interlocutory judgment has been entered. For completeness of record and avoidance of doubt, judgment is entered for the plaintiff against the defendant for: -
 - a. Kshs. 201,323,929.01, as ordered by the Dispute Board in decision of 13th January 2022, corrected on 19th January 2022;
 - b. Financing charges on any outstanding sums in (a) as above as ordered by the Dispute Board in decision of 13th January 2022, corrected on 19th January 2022, at the rate of 3% above Central Bank of Kenya Base Lending rate per annum from 28th January 2022 until payment in full;
 - c. Costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 26TH DAY OF FEBRUARY, 2026

F. GIKONYO M

JUDGE

In the presence of: -

Mukuha for Bwire for Plaintiff

No appearance for defendant

CA – Ivan/Aggrey

