



**Amana Capital Limited v Trade Sense Limited (Civil Application E047 of 2025)
[2026] KEHC 4151 (KLR) (Commercial and Tax) (12 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4151 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL APPLICATION E047 OF 2025**

MA OTIENO, J

MARCH 12, 2026

BETWEEN

AMANA CAPITAL LIMITED APPLICANT

AND

TRADE SENSE LIMITED RESPONDENT

RULING

Introduction

1. By a Share Purchase Agreement dated 23rd January 2023, as amended by an Addendum of 17th February 2023, the Respondent undertook to progressively purchase shares in the Applicant. Subsequently, on 26th July 2023, the parties executed a Settlement Agreement which was incorporated into, and formed part of, the Share Purchase Agreement.
2. Following alleged breaches by the Respondent relating to payment obligations, the Applicant issued a Formal Notice of Declaration of Dispute on 14th February 2024 pursuant to clause 16 of the Share Purchase Agreement, and the matter was referred to arbitration under clause 16.4 for appointment of a sole arbitrator by the Chairperson of the Chartered Institute of Arbitrators (Kenya).
3. Mr. Kyalo Mbobu, FCI Arb (now deceased), was appointed sole arbitrator on 22nd April 2024 and, after hearing the parties, published a final award on 4th December 2024.
4. In the award, the Tribunal:
 - a. found the Respondent in breach of the agreements;
 - b. awarded the Applicant nominal general damages of KES 100,000 with interest at 14% p.a. from the date of the award until payment in full;



- c. dismissed the claim for forfeiture of monies paid;
 - d. awarded costs of the reference assessed at KES 3,480,000 to the Applicant, payable within 14 days of uptake, failing which interest at 14% p.a. would accrue from the date of the award; and
 - e. assessed and directed payment of arbitration costs at KES 4,906,800 (VAT inclusive) within 14 days, similarly attracting 14% p.a. interest from the date of the award upon default.
5. The Respondent has allegedly failed to settle the award, prompting the instant application dated 11th June 2025 for recognition and enforcement as a decree of this Court.
 6. The Respondent did not file a response to the application, despite service. The application is therefore unopposed.
 7. In support of the application, the Applicant filed submissions dated 13th November 2025, which I have duly considered.

Analysis and Determination

8. From the pleadings and submissions filed by the Applicant, the Court finds that the sole issue for determination is whether the arbitral award dated and published on 4th December 2024 ought to be recognized and enforced by this Court under Sections 36 and 37 of the *Arbitration Act*.
9. Section 36 of the *Arbitration Act* sets out the legal parameters governing the enforcement and adoption of an 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.
2.
3. Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement shall 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.

10. In *Samura Engineering Limited vs Don-Wood Co Ltd* [2014] eKLR it was held: -

“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 a certified copy of it. Doubtless, the award must be filed...”

11. From the application and the affidavit in support thereof, the Court notes that the Applicant has annexed all documents required under Section 36(2) of the *Arbitration Act*, including:



- a. A certified copy of the Final Arbitral Award dated and published on 4th December 2024
 - b. A certified copy of the Arbitration Agreement;
 - c. The Arbitrator's Agreement;
 - d. Proof of service on the Respondent.
12. The Court's discretion to refuse recognition or enforcement is cabined by Section 37, which enumerates limited grounds—such as incapacity; invalidity of the agreement; want of proper notice or inability to present one's case; excess of jurisdiction; irregular composition or procedure; the award not being binding or being set aside/suspended; or fraud, bribery, corruption, or undue influence; as well as public policy concerns.
13. On the uncontested record before me, none of the statutory grounds has been invoked or established. The Respondent has filed no response impugning the arbitration agreement, the conduct of the proceedings, the composition of the tribunal, the scope of reference, or the integrity of the award. Nor is there any suggestion that the award has been set aside or suspended by a competent court, or that enforcement would offend Kenya's public policy.
14. As regards the decretal content of the award, the Tribunal's dispositive orders are sufficiently precise for purposes of enforcement:
- i. nominal damages of KES 100,000 with interest at 14% p.a. from 4th December 2024 until payment in full;
 - ii. costs of the reference of KES 3,480,000 payable within 14 days of uptake—failing which interest at 14% p.a. from 4th December 2024 to payment in full; and
 - iii. arbitration costs of KES 4,906,800 (VAT inclusive) payable within 14 days of uptake—failing which interest at 14% p.a. from 4th December 2024 to payment in full.
15. It therefore follows that there is no legal impediment to adopting these as part of the decree.
16. It bears reiterating that arbitration is party-autonomous and the Court, at the enforcement stage, does not sit on appeal over the merits. Where the award is regular on its face, and no Section 37 ground is demonstrated, the Court is enjoined to recognize and enforce it.
17. On the material presented, the threshold under Section 36 is met, and none of the Section 37 exceptions is satisfied.

Disposition

18. In the result, the Applicant's Chamber Summons dated 11th June 2025 is allowed on the following terms:
- i. The arbitral award published on 4th December 2024 by Mr. Kyalo Mbobu, FCIArb, is hereby recognized and adopted as a decree of this Court.
 - ii. Judgment is entered in favour of the Applicant in accordance with the award, namely:
 - a. General damages of KES 100,000, together with interest at 14% per annum from 4th December 2024 until payment in full.



- b. Costs of the reference assessed at KES 3,480,000, payable to the Applicant; in default of payment within the timelines stipulated in the award, the sum shall attract interest at 14% per annum from 4th December 2024 until payment in full.
- c. Costs of the arbitration assessed at KES 4,906,800 (VAT inclusive), payable to the Applicant; in default of payment within the timelines stipulated in the award, the sum shall attract interest at 14% per annum from 4th December 2024 until payment in full.
- iii. The Applicant is granted leave to execute in terms of the decree herein.
- iv. The costs of this application, which are hereby assessed at Kshs. 50,000/- is awarded to the Applicant.

19. Is so ordered.

SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 12TH DAY OF MARCH, 2026

ADO MOSES

JUDGE

In the presence of:

Mumbi...for Applicant

N/Afor Respondent

Moses.....C/A

