



**Kelliher v Mahiga Homes Limited (Arbitration Cause E018 of 2025)
[2026] KEHC 4723 (KLR) (Commercial and Tax) (9 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4723 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
ARBITRATION CAUSE E018 OF 2025**

F GIKONYO, J

APRIL 9, 2026

BETWEEN

ST. JOHN KELLIHER APPLICANT

AND

MAHIGA HOMES LIMITED RESPONDENT

RULING

1. The applicant filed the chamber summons dated 14.12.2025 mainly under sections 10, 32A and 36 of the *Arbitration Act*, seeking the adoption, recognition and leave to enforce the arbitral award made and published in Nairobi on 31.10.2024 as a decree of this court.
2. The application is premised on the grounds set out in its body and the supporting affidavit sworn by the applicant on 14.2.2025.
3. There was no response by the respondent despite service on 7.3.2025, evidenced by return of service.

Background

4. The background is that the applicant and the respondent entered into two sale agreements dated 17.2.2022 for the sale and purchase of two 3-bedroomed bungalows described as bungalow number 5 and 6 respectively, situate on the respondent's property comprised in Title Number Mavoko Town Block 3/49.
5. The applicant and the respondent also entered into two arbitral agreements dated 17.2.2022, where it was contracted that in case any dispute, difference or question shall arise between the applicant and the respondent arising from the sale agreements, such dispute which could not be amicably resolved through a negotiated settlement or mediation within 15 days would be referred to a single arbitrator for determination, and the arbitrator's decision would be final and binding.



6. Pursuant to the arbitral agreements, Mr. Martin Mbugua, MCIArb, was duly appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Branch as the sole arbitrator in the matter, and which appointment he accepted and proceeded to conduct the arbitral proceedings culminating in the delivery of the arbitral award made and published in Nairobi on 31.10.2024, to the effect that: -
1. the respondent pays the applicant KShs. 6,050,000/= being a refund of sums paid as deposits for the purchase of Bungalow No. 5 and 6 at Ruby Gardens 2 Estate.
 2. the respondent pays the applicant simple interest at the rate of 14% per annum on the above sum from 1.7.2023 until payment in full.
 3. the respondent pays the applicant Kshs. 485,460/= being the fees for the arbitral tribunal.
 4. that the respondent pays the claimant Kshs. 525,000/= being his costs of representation in the arbitral proceedings.

Grounds

7. The application is based on the following grounds: -
1. The award is valid, final and binding on the parties.
 2. The applicant is apprehensive that the respondent has demonstrated its inability, incapacity, unwillingness and/ or otherwise default to pay the amounts due and owing despite demands.
 3. The applicant stands to suffer substantial and irreparable financial loss and harm in the event the orders sought are not granted.
 4. The lower risk of injustice and the balance of convenience tilts in favour of allowing the application.

Analysis and Determination

8. I have considered the application, the grounds and the supporting affidavit. The issue is whether the arbitral award herein should be recognised and enforced as an order of the court.
9. 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.”



10. The applicant exhibited a copy of the sale agreements 17.2.2022 in respect of bungalows 5 and 6, containing arbitration agreements under clauses 24 (c). He further exhibited a copy of the final arbitral award published on 31.10.2024.
11. As earlier noted, the respondent has not filed any response in opposition to the application, despite service. Nonetheless, the application must be considered on its merit by the court as a way of promoting alternative justice and ensuring compliance with the law. Art. 159(2)(c) & (3) of *the Constitution*.
12. The applicant has met the prerequisites for recognition and enforcement of the final award under section 36 of the *Arbitration Act* as an order of the court.
13. The court has not been shown any ground for refusal of recognition or enforcement of the award under section 37 of the *Arbitration Act*.

Disposal

14. Accordingly, the chamber summons dated 14.12.2025 is allowed with no order as to costs.
15. Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 9TH DAY APRIL, 2026

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F. GIKONYO M

JUDGE

In the presence of: -

Githui for Applicant

Orengo for Respondent

CA – Ivan/Aggrey

