

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION
MISCELLANEOUS APPLICATION NO. E090 OF 2024

AVENEWS KE
LIMITED.....APPLICA
NT
VERSUS
GATTO COMMODITIES
LIMITED.....RESPONDENT

RULING

1. By Chamber Summons dated **16th October 2024**, the Applicant seeks recognition and enforcement of an **Arbitral Partial Award dated 3rd June 2024** and a **Final Arbitral Award dated 8th June 2024** as a decree of this Court, pursuant to Sections 36 and 37 of the Arbitration Act, No. 4 of 1995.
2. The application is supported by an affidavit sworn on the same date by **Emmanuel Murai** and written submissions filed on behalf of the Applicant. The Respondent opposed the application through a replying affidavit sworn on 31st October 2025 by **John Gatu Mwangi**, together with written submissions dated **19th January 2026**.

3. The background of the matter is that the parties entered into **Purchase Finance Money Agreements** in August 2022 under which the Applicant advanced loans to the Respondent for the purchase of wheat. A dispute arose following default in repayment.
4. The dispute was referred to arbitration pursuant to an arbitration clause contained in the agreement (Clause 22). Upon failure by the parties to jointly appoint an arbitrator, the **Chartered Institute of Arbitrators (Kenya Branch)** appointed **Mr. Nikhil Desai, FCI Arb**, as sole arbitrator.
5. Following the arbitral process, the arbitrator published a **Partial Award on 3rd June 2024**, followed by a **Final Award on 8th June 2024**, addressing costs and interest. These awards have not been subjected to any application for correction, interpretation, or setting aside under the Act.
6. The Applicant's case is that the awards are final and binding, and that the same ought to be recognized and enforced since the Respondent has neither sought a correction or interpretation of the awards nor filed any application to set them aside within the statutory timelines. It is therefore the Applicant's position that it has complied fully with the requirements set out under **Section 36(3) of the Arbitration**

Act, and that no grounds exist for refusal of enforcement under **Section 37** of the Act.

7. The Respondent, on the other hand, opposed the application on several grounds, including that the amounts claimed are exaggerated; that they were never informed of the arbitration hearing and thus were not heard; that their office was closed due to financial constraints and the Director was out of the country, leading to a lack of awareness regarding the award's delivery; and finally, that the arbitrator failed to follow proper procedures.

Analysis and Determination

8. From the pleadings and submissions, the sole issue for determination is whether the Applicant has met the threshold for recognition and enforcement of the arbitral awards under Sections 36 and 37 of the Arbitration Act.
9. Section 10 of the Arbitration Act expressly limits judicial intervention in arbitral matters. The provision is clear that Courts may intervene only where the Act so permits. This principle has been consistently affirmed, most notably in **Anne Mumbi Hinga v Victoria Njoki Gathara [2009] eKLR**, where the Court of Appeal cautioned against interference outside the statutory framework.

10. Under **Section 36(1)** of the Act, a domestic arbitral award shall be recognised as binding and enforced upon application to the High Court. Section 36(3) sets out the documentary requirements that must accompany such application. Once these requirements are satisfied, enforcement follows as a matter of course, unless the Court is persuaded otherwise under Section 37.

11. The grounds upon which enforcement may be refused are exhaustively enumerated under **Section 37(1)** of the Act. The provision places the burden squarely upon the party resisting enforcement to prove the existence of one or more of those grounds. This position was clearly stated in **Perma Structural Engineering Co. Ltd v Rift Valley Water Services Board [2012] eKLR**, where the Court held that absent proof of statutory grounds, enforcement must issue.

12. The Respondent's principal grievance is that it was not accorded proper notice of the arbitral proceedings and was therefore unable to present its case. Such allegations fall within the grounds contemplated under **Section 35** of the Act relating to setting aside of an arbitral award.

13. Section 35(3) is explicit that an application for setting aside must be made within three (3) months from the date the party

received the award. The Respondent does not dispute that no such application was filed within the prescribed period.

14. It is now settled law that enforcement proceedings under Section 36 cannot be used as a surrogate avenue for challenging an award outside the timelines under Section 35.
15. The Court of Appeal in **EpcO Builders Limited v Adam S. Marjan (Arbitrator) & another [2014] eKLR** underscored that the High Court does not exercise appellate jurisdiction over arbitral awards and cannot interrogate alleged errors of fact, law, or procedure save as provided by the Act.
16. As regards the arbitration agreement, the Respondent does not deny its existence. Indeed, correspondence on record demonstrates that arbitration was previously invoked as a dispute resolution mechanism. The challenge raised is therefore technical and does not meet the standard required under **Section 37(1)(a)(ii)** to invalidate an arbitration agreement.
17. No allegation has been substantiated to suggest that enforcement of the awards would be contrary to the **public policy of Kenya** within the meaning of **Section 37(1)(b)(ii)**. As stated in **Christ for All Nations v Apollo Insurance Co.**

Ltd [2002] EA 366, public policy is not invoked merely because a party is dissatisfied with the outcome of arbitration.

18. Finally, this Court is guided by the pronouncement of the Supreme Court in **Nyutu Agrovet Limited v Airtel Networks Kenya Limited [2019] eKLR**, which reaffirmed the centrality of finality and party autonomy in arbitration, subject only to clearly defined statutory exceptions.

19. The upshot of the foregoing is that the Court is satisfied that the Applicant has complied with **Section 36 of the Arbitration Act**, and that the Respondent has failed to establish any ground under **Section 37** to warrant refusal of enforcement.

20. Accordingly, the Court makes the following orders:

- i. The Arbitral Partial Award dated 3rd June 2024 and the Final Arbitral Award dated 8th June 2024 are hereby recognised and adopted as a decree of this Court.
- ii. The said awards shall be enforced as a decree of the High Court of Kenya.
- iii. The Respondent shall bear the costs of the application.

21. It is so ordered.

**DATED, SIGNED, AND DELIVERED AT NAIROBI
THIS 23RD DAY OF APRIL 2026**



HON. MR. JUSTICE MOSES ADO
Judge of the High Court

In the presence of: -

C/A - Moses

N/A..... for the Applicant

Ms. Nganga..... for the Respondent