

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
MISC CIVIL CASE NO. 325 OF 2018

**HONDA MOTORCYCLE KENYA
LTD.....APPLICANT**

VERSUS

**GERICK KENYA LIMITED.....
RESPONDENT**

RULING

1. This is a Ruling by the Applicant by way of a Chamber Summons dated 20th December, 2024 seeking orders of recognition of a Ruling on assessment of costs arising post an Arbitral Award.

Background Facts

2. The Applicant filed the Chamber Summons dated 20th December 2024 seeking the following orders;

a) The Court to recognize the Ruling on assessment and taxation of costs dated 3rd March 2022 by Patterson Munene Kamaara, Arbitrator, as a Certificate of Costs of this Court.

b) The Court be pleased to grant leave to the Applicant for the enforcement of the Ruling on assessment and

taxation of costs dated 3rd March 2022 as a Certificate of Costs of this Court.

c) The costs of this application be borne by the Respondent.

3. The Application was supported by the Affidavit of **Eric Ngugi**. He deponed that the Parties entered into a Dealership Agreement on 5th January 2016. The Applicant appointed the Respondent as a non-exclusive distributor in Kenya. The Agreement contained a dispute resolution clause (Clause 73) providing for arbitration by an Arbitrator appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Chapter. Following a dispute between the Parties, the matter was duly referred to arbitration in accordance with the Agreement.
4. Arbitral proceedings were conducted, culminating in a Final Award in favour of the Applicant published on 22nd June 2018. The Award was subsequently recognized as a Judgment and Decree of the Court on 14th October 2021. Subsequently a Ruling on the Assessment and Taxation of Costs was later delivered on 3rd March 2022.

5. In reply, the Respondent filed the Replying Affidavit, sworn on 20th May 2025. It was averred that the Applicant and the Respondent entered into a Non-Exclusive Dealership Agreement dated 5th January 2016. A dispute subsequently arose between the parties in relation to the Agreement, prompting the invocation of Clause 73 and referral of the dispute to arbitration. Arbitral proceedings were conducted before the Sole Arbitrator, P.M. Kamaara, culminating in an award published on 22nd June 2018. Approximately eleven months later, the Applicant filed a Party and Party Bill of Costs dated 22nd May 2019 for consideration by the Arbitrator.
6. The Respondent objected to the Arbitrator's jurisdiction to tax the Party and Party Bill of Costs dated 22nd May 2019. Notwithstanding this objection, the Arbitrator proceeded to publish an additional award on 3rd March 2022, allowing the Bill as drawn. The Respondent contended, on advice of Counsel, that the said additional award on taxation of costs is a nullity, having been made in contravention of the provisions of the Arbitration Act.

7. In particular, it was argued that the Bill of Costs was filed outside the statutory period of thirty (30) days prescribed under **Section 34(4) of the Arbitration Act**. That no application for extension of time was made under **Section 34(6)**. That the additional award was rendered over two years after the filing of the Bill, contrary to **Section 34(5)** which requires such awards to be made within sixty (60) days. In light of these irregularities, the Respondent maintained that the recognition of the taxation award is unlawful and not anchored in law.

Issues for determination

8. The court has carefully considered the Application, response, the written submissions and the oral highlights by Counsel for the parties. The Court frames two issues for determination as follows;

a) Whether the Award of costs by the Arbitrator was time barred as he was functus officio.

b) Whether the Ruling on assessment and taxation of costs should be recognized as a Certificate of Costs of this Court.

Analysis

9. The question that has been placed before the Court is whether the costs were assessed after time for doing so had passed?

(a) Whether the Award of costs by the Arbitrator was time barred as he was functus officio.

10. It was the Respondent's case that the Applicant filed its Party and Party Bill of Costs on 22nd May 2019, approximately eleven months after the arbitral award was published on 22nd June 2018. That this was in clear contravention of **Section 34(4) of the Arbitration Act**, which requires any request for an additional award to be made within thirty days of receipt of the award. This delay rendered the application unprocedural and deprived the Arbitrator of jurisdiction to tax the Bill, as it was not properly

before the Tribunal. It is undisputed that the Applicant received the award in good time and was aware that costs had not been ascertained, and was therefore under a duty to act promptly and within the statutory timelines to have the costs determined.

11. In contravention, the Applicant submitted that the determination of the quantum of costs payable does not fall within the ambit of Section 34 of the Arbitration Act, as what was sought was neither a correction, clarification, nor interpretation of the arbitral award. It is contended that an arbitral award is final and binding upon the parties pursuant to **Section 32A of the Act**, and no recourse lies against it except in the manner expressly provided therein.
12. Accordingly, the Applicant argued that the only recourse available to the Respondent, following the decision on costs, was to move this Court appropriately. However, no application has been made to set aside the award on costs under **Section 35 of the Arbitration Act**, and as such, the award remains valid and enforceable.

13. **Section 34 of the Arbitration Act**, relied on by the Respondent, relates to the correction of errors in an Arbitral Award. It is provided for under **Section 34 of the Arbitration Act** which states as follows: -

“(1) Within 30 days after receipt of the arbitral award, unless a different period of time has been agreed upon by the parties—

(a) a party may, upon notice in writing to the other party, request the arbitral tribunal to correct in the arbitral award any computation errors, any clerical or typographical errors or any other errors of a similar nature; and

(b) a party may, upon notice in writing to the other party, request the arbitral tribunal to clarify or remove any ambiguity concerning specific point or part of the arbitral award.

(2) If the tribunal considers a request made under subsection (1) to be justified it shall, after giving the other party fourteen days to comment, make the correction or furnish the clarification within thirty days whether the comments have been received or not, and the correction or clarification shall be deemed to be part of the award.

(3) The arbitral tribunal may correct any error of the type referred to in subsection (1)(a) on its own initiative within thirty days after the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party may upon notice in writing to the other party, within thirty days after receipt of the arbitral award, request the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under subsection (4) to be justified, it shall make the additional arbitral award within sixty days.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under subsection (2) or (5).

(7) Section 32 shall apply to a correction or an interpretation of the arbitral award or to an additional arbitral award made under this section."

14. It is the Court's understanding that this is not an issue that involves the correction of an award but rather an issue

of costs, which the Arbitrator was called upon to make a determination on.

15. On the issue of costs, **Section 32B of the Arbitration Act** provides as follows:

“Unless otherwise agreed by the parties, the costs and expenses of an arbitration, being the legal and other expenses of the parties, the fees and expenses of arbitral tribunal and any expenses related to arbitration shall be as determined and apportioned by the arbitral tribunal in its award under this section or any additional award under section 34(5).”

16. As pointed out by the Arbitrator, the Ruling dated 11th May 2020, made by **Hon. C Wanyama, Deputy Registrar**, in which the learned Taxing Master determined that the proper place for the taxation of the Claimant's Bill of Costs is in the Arbitral Tribunal and not in the Court. The Court found unequivocally that the Arbitral Tribunal is the only body and "No other body" should make determination as to the question of the costs payable and/or how they should be apportioned. The said Ruling resulted from a preliminary objection raised by the Respondent against the Court taxing

the Claimant's Bill of Costs. The Court, in essence, upheld the Respondent's objection which led to the taxation of costs by the Arbitrator.

17. On this issue, the Court associates itself with the holding in **National Water Conservation & Pipeline Corp v Runji & Partners Consulting Engineers & Planners Ltd (Arbitration Cause E025 of 2021) [2023] KEHC 21306 (KLR) (Commercial and Tax) (27 July 2023) (Ruling)** where the Court held;

“30. Section 34 is on correction and additional awards.....

31. The import of subsection (4) is that a request for an additional award is to be made 30 days after receipt of the arbitral award. The additional award must be on claims that were made in the arbitral proceedings but their determination omitted in the award. It is that additional award whose time is limited to thirty days and the party seeking that additional award, has to serve notice to the opposite party in that regard. Under subsection (5), the additional award, if any, is to be made within sixty (60) days.

32. A perusal of the arbitral award shows, as correctly argued by Runji & Partners, that the issue of costs and who was to bear those costs, was determined by the sole arbitrator. (See para 11.2 of the award.) What remained to be determined was the quantum of those costs. Section 32B is clear that parties may agree on how costs are to be determined. In that regard, Runji & Partners asserts that parties had determine issues of costs as parties may agree. According to paragraph 19 of the Order for Directions No. 3 dated 10th June 2016, the successful party was to lodge a bill of costs after publication of the award. There was no time limit within which the bill of costs was to be filed or a determination on costs made. The section National Water relies on does not state that the issue of costs must be made or determined within 30 days. Only an additional award which is on issues that were omitted in the award is subject to time.

34. National Water has misapprehended as it relates to additional award which is not the same as award on costs as parties may agree. At the risk of repeating myself, an additional award is an award on claims that were in the arbitral

proceedings but were not determined in the arbitral award. Assessment of costs in the manner parties had agreed could not amount to an additional award in terms of section 34.”

18. In light of the above, it is the Court’s finding that the determination of the quantum of costs payable does not fall within the ambit of **Section 34 of the Arbitration Act**, as what was sought was neither a correction, clarification, nor interpretation of the arbitral award. The decision in **Sogea - Satom SAS & another v Kenya Airports Authority [2025] KEHC 11729 (KLR)** by **Njoki Mwangi J.** supports this position. In any event the Court of Appeal in has removed any doubt that an Arbitrator is not time barred to determine the issue of costs. He does not become functus officio due to passage of time. That is what the Court of Appeal held in **Kenfit Limited v Consolata Fathers [2015] KECA 630 (KLR)**.

(b) Whether the Ruling on assessment and taxation of costs should be recognized as a Certificate of Costs of this Court.

19. Further, the Applicant seeks recognition and adoption of the additional award and the statutory provision that govern the enforcement of the Award is **Section 36 of the Arbitration Act** provides that:

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.

20. The Court has perused the record and notes that the Applicant has attached the Additional Arbitral Award dated 3rd March 2022 pursuant to the Award dated 22nd June 2018.

21. The Additional Arbitral Award dated 3rd March 2022 is hereby recognized and adopted as a decree of this Court.

22. As to costs the same are awarded at discretion. Ordinarily costs follow the event. There is no good reason advanced to deny the successful Applicant the costs of the application.

Determination

23. The Applicant's Application by way of a Chamber Summons

dated 20th December, 2024 is allowed in the following terms;

a) *The Court HEREBY does recognize the Ruling on assessment and taxation of costs dated 3rd March 2022 by **Patterson Munene Kamaara, Arbitrator**, as a Certificate of Costs of this Court.*

b) *The Court HEREBY grants leave to the Applicant for the enforcement of the Ruling on assessment and taxation of costs dated 3rd March 2022 as a Certificate of Costs of this Court.*

c) *The costs of this application be borne by the Respondent.*

24. It is so ordered.

25. This file be marked as closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 27TH DAY OF APRIL, 2026.

**NJOROGE BENJAMIN K.
JUDGE**

In the presence of;

Mr. Ndolo for Miss Kilonzo for the Applicant.

Mr. Mbugua for the Respondent.

Mr. John Paul - Court Assistant.