

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT NAIROBI**  
**COMMERCIAL AND TAX DIVISION**  
**MISC. APP. NO. E538 OF 2025**

**INTERNATIONAL HOTEL & TOURISM  
INSTITUTE.....APPLICANT**

**VERSUS**

**MANSOFT  
LIMITED.....RESPON  
DENT**

**RULING**

1. This is a Ruling arising out of an application by way of a Chamber Summons dated 28<sup>th</sup> May, 2025. It seeks to set aside an Arbitral Award under **Section 35 of the Arbitration Act.**

**Background Facts**

2. The Applicant filed the Chamber Summons dated 28<sup>th</sup> May, 2025 seeking the following orders;
  - a) *The court to set aside the Arbitral Award of the Arbitrator Hon. W. Akoth Aluoch dated 14<sup>th</sup> April, 2025 for being contrary to public policy.*

- b) The court to issue any other or further orders and/or directions as it may deem just, fit and expedient to issue.*
- c) Costs of this Application be provided for.*
3. The Application was supported by the Affidavit of **Ambassador Mwakai Kikonde Sio**, who stated that the parties were involved in arbitral proceedings that commenced on 15<sup>th</sup> December 2023 before **Hon. W. Akoth Aluoch**, arising from a dispute concerning the supply, setup, customization, and implementation of a College IT System under a Project Contract Agreement dated 26<sup>th</sup> May 2021. The Tribunal delivered an arbitral award dated 14<sup>th</sup> April 2025 and issued on 15<sup>th</sup> April 2025, after which the Respondent, on 23<sup>rd</sup> May 2025, indicated its intention to proceed with taxation, enforcement of the award, and execution.
4. The Applicant contended that the arbitral award is contrary to public policy and inconsistent with **Article 159 of the Constitution of Kenya**, the Civil Procedure Rules, the Chartered Institute of Arbitrators Rules, and the Evidence

Act. It is further argued that the award is contrary to justice and morality because the Tribunal allegedly relied primarily on the evidence presented by the Respondent while disregarding the Applicant's evidence, failed to address key issues in dispute—particularly whether the Respondent fully supplied and implemented the College IT System—and improperly responded to the Respondent's Counterclaim, thereby occasioning an injustice.

5. In response, the Respondent filed a Replying Affidavit sworn on 18<sup>th</sup> June 2025. It was deponed that the application is misconceived, incompetent, and amounts to a disguised appeal against the arbitral award delivered on 14<sup>th</sup> April 2025 by the Sole Arbitrator, **Hon. W. Akoth Aluoch**. It argues that the award is final and binding under **Section 10 of the Arbitration Act** and that the Applicant's arguments improperly challenge the merits of the arbitral determination rather than raising valid grounds for setting aside the award.
6. The Respondent further stated that the allegation that the Tribunal disregarded the Applicant's evidence is false and misleading. According to the Respondent, the award

comprehensively analyzed the pleadings, oral testimonies, and documentary evidence presented by both parties, including the testimonies of the Respondent's witness and the Applicant's three witnesses. The Tribunal also examined the disputed modules of the College IT System, interpreted the parties' contractual obligations, and concluded that **Mansoft Limited** had delivered the modules as required, noting that the conduct of the parties had mutually varied any delay in performance.

7. It was also asserted that the Tribunal properly considered and dismissed the Applicant's Counterclaim for lack of sufficient evidence after evaluating both oral and documentary material on record. The Respondent maintained that the allegations of breach of public policy, violation of **Article 159 of the Constitution**, and reliance on **Order 22 Rule 11 of the Civil Procedure Rules** are unfounded and legally untenable. The arbitral proceedings were conducted fairly, with both parties fully participating, and therefore, the application merely seeks to re-argue the

merits of the case contrary to the principle of finality of arbitral awards.

**Issues for Determination**

8. Having considered the Application, response, the submissions and oral highlights by Counsel for the parties, the Court frames only one issue for determination;

- (a) *Whether the arbitral award should be set aside for being contrary to public policy.*

**Analysis**

9. The Application is brought under **Section 35(2)(b)(ii) of the Arbitration Act**, which allows a court to set aside an arbitral award where it finds that the award is in conflict with the public policy of Kenya. This section provides;

***35. Application for setting aside arbitral award.***

***(1).....***

***(2) An arbitral award may be set aside by the High Court only if—***

***(a) the party making the application furnishes proof—***

.....  
**(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration or contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, only that part of the arbitral award which contains decisions on matters not referred to arbitration may be set aside**

.....  
**(b) the High Court finds that—**  
**(i) .....**  
**(ii) the award is in conflict with the public policy of Kenya.**

10. It was the Applicant’s prayer that the Court set aside the Arbitral Award dated 14<sup>th</sup> April 2025 on the grounds that the Tribunal allegedly exceeded the scope of the Project Contract Agreement dated 21<sup>st</sup> May 2021. The Applicant further contends that the Award is inconsistent with the objectives of **Article 159 of the Constitution of Kenya, 2010** and is in contravention of the laws of Kenya, specifically **Order 2 Rule 11 (1) and**

**(2) of the Civil Procedure Rules, Rule 80 of the Chartered Institute of Arbitrators Rules, 2020, and Section 112 of the Evidence Act.** On this basis, the Applicant urges the Court to set aside the Arbitral Award pursuant to the public policy grounds provided under **Section 35(2)(b)(ii)** and **Section 37(1)(b)(ii) of the Arbitration Act.**

11. On the other hand, it was the Respondent's case that the Applicant's reliance on the ground that the arbitral award is contrary to public policy is merely an attempt to re-litigate the dispute between the parties. The Applicant has failed to demonstrate which specific public policy of the country would be offended by the award or how the award would infringe upon the rights of other persons or third parties so as to warrant its setting aside.

12. In essence, the application challenges the merits of the award and seeks to re-argue the evidence and conclusions reached by the Arbitrator. However, under **Section 35 of the Arbitration**

**Act**, the Court does not sit as an appellate court over arbitral awards, and its review is limited strictly to issues of jurisdiction, procedural fairness, or public policy rather than a re-evaluation of the evidence.

13. The phrase “*public policy*” was enunciated in **Christ for All Nations v Apollo Insurance Co Ltd The [2002] 2 EA 366**, where **Ringera J**, explained the scope of public policy as a ground for setting aside an arbitral award as follows:

***“I take the view that although public policy is a most broad concept incapable of precise definition, ... an award will be set aside under section 35(2) (b) (ii) of the Arbitration Act as being inconsistent with the public policy of Kenya if it was shown that it was either (a) inconsistent with the constitution or other laws of Kenya, whether written or unwritten; or (b) inimical to the national interest of Kenya; or (c) contrary to justice and morality.....”***

***The court further warned that not every infraction, whether of precedent or misinterpretation of law or misapprehension of***

***facts, falls within the scope of the public policy exception:***

***In my judgment, this is a perfect case of a suitor who strongly believed the arbitrator was wrong in law and sought to overturn the award by invoking the most elastic of the grounds for doing so. He must be told clearly that an error of fact or law or mixed fact or law or of construction of a statute or contract on the part of an arbitrator cannot by any stretch of imagination be said to be inconsistent with the public policy of Kenya. On the contrary, the public policy of Kenya leans towards finality of arbitral awards and parties to an arbitration must learn to accept an award, warts and all, subject only to the right of challenge within the narrow confines of section 35 of the Arbitration Act.”***

14. The Applicant took the position that the Tribunal responded to the Counterclaim on behalf of the Respondent. By responding on behalf of the Respondent, the Tribunal abandoned its neutrality and its call for impartiality, and she assumed the role of a party, thereby contravening the principles of justice and the right to a fair hearing enshrined in the Constitution of Kenya.

15. At paragraph 60 of the Award the Arbitrator stated;

***“While the Claimant did not file a formal reply to the Counterclaim or directly contest the Respondent's stated expectations regarding submodule sequencing, it defended its delivery approach through oral testimony and supporting documentation. Claimant Witness 1 (Alexander Owino) testified that the project was executed using the SDSC methodology, a sequential model comprising phases such as analysis, design, development, testing, deployment, and maintenance. The Claimant argued that this approach was industry-standard and fit-for-purpose.”***

16. In light of the above, was the Arbitrator’s determination contrary and inconsistent with any written law? **Rule 80 of the Chartered Institute of Arbitrators Rules, 2020** provides;

***(c) For the Claimant to deliver to the Arbitral Tribunal and the Claimant a Reply within 7 days of receipt of the Defence (and Counterclaim, if any). Where the Respondent has advanced a counterclaim against the Claimant, a Defence to***

***the Counterclaim shall be included in the same document as the Reply.***

17. It is the Court's understanding that the Arbitrator acknowledged that the Respondent herein did not put any response to the Counterclaim, based on the facts and after considering the evidence before her, she arrived at a decision not to allow the Counterclaim.

18. In addition, the Applicant has not demonstrated how the decision undermines Kenya's legal order, the administration of justice, or the national interest. Jurisprudence has established that "public policy" should be construed narrowly, applying only to decisions that are fundamentally contrary to the justice system; mere hardship, perceived unfairness, or dissatisfaction with the outcome is insufficient to meet this threshold.

19. The Applicant averred that the Arbitrator went outside of the scope of the contract for reasons that the Tribunal focused on what she referred to

as Appendices B-H, which amounted to rewriting the contract between the parties. The appendices referred to by the Tribunal, though anticipated to be part of the contract, did not form part of the contract.

20. On this issue, the Court is of the considered view that it is not the duty of this Court to re- evaluate the evidence before the arbitrator. In the case of **Mahican Investments Limited vs Giovanni Gaid & 80 others [2005] KEHC 1267 (KLR)**, Justice P.J. Ransley stated;

***“A court will not interfere with the decision of arbitration even if it is apparently a misinterpretation of the contract, as this is the role of the Arbitrator. To interfere would place the court in the position of the Court of Appeal, which the whole intent of the Act is to avoid. The purpose of the Act is to bring finality to the disputes between the parties.”***

21. In the end, the Court finds that the Applicant has failed to establish that the arbitral award dated 14<sup>th</sup> April 2025 is contrary to the public policy of Kenya within the meaning of

**Section 35 (2) (b) (ii) of the Arbitration Act.** The Application is accordingly dismissed.

22. As to costs the same lie at the discretion of this Court and ordinarily follow the event. This legalese is meant to be understood that the winning party is entitled to costs. The same are awarded to the successful Respondent.

**Determination**

23. The Applicant's application by way of a Chamber Summons dated 28<sup>th</sup> May, 2026 is HEREBY dismissed for lack of merits.

24. The costs thereof are awarded to the Respondent.

25. It is so ordered.

26. This file is marked as closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF APRIL, 2026.**

**NJOROGE BENJAMIN. K  
JUDGE**

**In the presence of: -**

Mr. Yusuf for the Applicant.

N/A for the Respondent.

Mr. John Paul -Court Assistant.