

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC MISC. APPLICATION NO. E052 OF 2025

ANNE NJOKI NJAGI

APPLICANT

VERSUS

JANE MWIHAKI NDUTI

RESPONDENT

RULING

*(In respect of the Chamber Summons application dated 1st August 2025
seeking recognition of an arbitral award)*

Introduction

1. The Applicant, **Anne Njoki Njagi**, moved this Court by way of a Chamber Summons application dated **1st August 2025**. The application is brought under **Section 36 (1) and (3) and 37 of the Arbitration Act, 1995, Section 59 of the Civil Procedure Act, Section 4 and 13 of the Environment and Land Court, Rules 4(1)(2)(3)(5) and 6 of Arbitration Rules, 1997, Order 46 Rule 10 and 18 of the Civil Procedure rules, and Article 162 (2) of the Constitution.**

2. The Applicant seeks the following substantive orders:

1.**THAT** this Honourable Court be pleased to recognize and adopt the Final Award prepared by Shafiq Taibjee dated 4th November 2023 as a Judgment of this Honourable Court.

2.**THAT** the Honourable Court be pleased to grant leave to the Applicant to enforce the said Arbitral Award as a decree of this Honourable Court that reflects the orders of the Arbitrator.

3. The costs of this application be payable by the Respondent.

3. The application is premised on the grounds that the Applicant holds a valid and binding award delivered by **Shafiq Taibjee** on **4th November 2023**. The said award directed the handing over of a vacant plot known as **Title Number KJD/KISAJU/4076** and the payment of arbitration costs in favour of the Applicant. The Applicant contends that the Respondent has failed to hand over the property despite being aware of the award and receiving formal demands. It is further stated that the statutory period for challenging the award has lapsed with no challenge being notified by the Respondent.

4. The Respondent, Jane Mwhiki Nduti, vehemently opposes the Chamber Summons through Grounds of Opposition dated 4th

December 2025 and a Replying Affidavit sworn on 4th December 2024, asserting that the application is fundamentally flawed on several fronts.

5. Primarily, the Respondent contends that the application is premature and incompetent because the Applicant's own advocates issued a written Notice of Intention to Seek Clarification under Section 34(1)(b) of the Arbitration Act on 13th February 2024. In this notice, the Applicant explicitly acknowledged an ambiguity in clause (a) of the Arbitral Award concerning the phrase "handing over" of Title No. KJD/KISAJU/4076 .
6. The Respondent maintains that since the Section 34 clarification process remains unexhausted and no such clarification has been rendered by the Arbitrator, the award is not yet ripe for recognition or enforcement under Sections 36 and 37 of the Act. Furthermore, the Respondent argues that the Arbitral Award seeks to compel a controlled transaction involving agricultural land without the requisite Land Control Board consent, which is a mandatory requirement under Sections 6 and 7 of the Land Control Act. It is the Respondent's submission that enforcing the award in its current state would facilitate

an illegality and offend public policy, thereby providing a basis for refusal under Section 35(2)(b)(ii) of the Arbitration Act.

7. Beyond the merits of the award itself, the Respondent raises a significant procedural objection regarding the Applicant's previous filing of Kajiado ELC Misc. Civil Application E001 of 2025, which sought identical orders. That matter was withdrawn on 24th July 2025 before Lady Justice Christine Meoli, with the court assessing costs of Kshs 20,000/= against the Applicant. The Respondent deposes that these costs remain unpaid, which, pursuant to Order 25 Rule 4 of the Civil Procedure Rules, serves as a procedural bar to the institution of the present application. Consequently, the respondent characterizes the current proceedings as an abuse of the court process and an instance of deliberate forum shopping.

8. The Applicant, in her Supplementary Affidavit sworn on 17th February 2026, denies any admission of ambiguity in the Arbitral Award and clarifies that the Notice of Intention to Seek Clarification was prompted by concerns raised by the Respondent's counsel during a telephone conversation. This clarification was sought as a matter of good faith to expedite the transfer process and avoid the very

obstacles now presented by the Respondent. It is deposed that the Arbitrator has since declared himself *functus officio* following multiple ignored follow-ups, leaving the award final and ripe for enforcement .

9. Concerning the term "handing over," the Applicant contends the phrase is sufficiently clear in its requirement for the Respondent to relinquish control and vacant possession of Plot No. KJD/KISAJU/4076 . She further argues that the lack of Land Control Board consent is a result of the Respondent's own refusal to initiate the transfer procedure despite having received the full purchase price. In her view, the legal procedures for transfer, such as obtaining consent and signing forms, follow the due course of a transaction and do not require explicit prompting within the award itself .

10. With regard to the costs of Kshs 20,000/= arising from the withdrawal of Kajiado ELC Misc. Civil Application E001 of 2025, the Applicant asserts that this is a non-issue as the costs have already been settled. She maintains that the Respondent's reliance on this procedural point is a distraction, noting that the Respondent herself has failed to settle the arbitration costs awarded against her . The Applicant ultimately submits that the grounds of opposition are

unmeritorious attempts to defraud her of the land parcel she purchased as a bona fide purchaser for value.

Directions

11. The application was canvassed by way of written submissions, which have been duly considered in the writing of this ruling.

Issues for Determination

12. The Court has carefully considered the Chamber Summons application dated 1st August 2025 together with the affidavits on record, the grounds of opposition, and the rival submissions. In the Court's view, the only issue for determination is whether the Chamber Summons application is merited.

Analysis and Determination

13. The application is anchored on Sections 36 and 37 of the Arbitration Act, 1995, which govern the recognition and enforcement of arbitral awards. Section 36(1) provides that:

“an 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.”

14. The effect of the foregoing provision is that once an arbitral award is delivered, it attains binding force between the parties and is enforceable by the Court unless it is successfully challenged within the narrow grounds set out under Section 37 of the Act. Section 37, in turn, limits the circumstances under which recognition or enforcement may be refused, including where the award is not yet binding, has been set aside, or where enforcement would be contrary to the public policy of Kenya.

15. The starting point in determining this application is the undisputed fact that an arbitral award was issued on 4th November 2023 by Shafiq Taibjee, which directed, among other things, the handing over of vacant possession of Title Number KJD/KISAJU/4076 and payment of arbitration costs. It is also not in dispute that no application has been brought under Section 35 of the Arbitration Act to set aside the award, nor has any competent court annulled or stayed its operation. The legal consequence of this is that the award retains its binding and enforceable character subject only to the limited statutory exceptions under Section 37.

16. The Respondent has raised several objections, the first being that the application is procedurally barred on account of unpaid costs arising from a previous withdrawn miscellaneous application. It is argued that because Kajiado ELC Misc. Civil Application E001 of 2025 was withdrawn and costs of Kshs 20,000/= were awarded, the present application is incompetent. While Order 25 Rule 4 of the Civil Procedure Rules provides that upon withdrawal of a suit costs may be payable and the Court may stay subsequent proceedings until such costs are paid, the Court is not persuaded that such a procedural issue can operate as a bar to the determination of a substantive application for recognition of an arbitral award. The Respondent is at liberty to execute for the costs in accordance with the provisions of the Civil Procedure Rules.

17. The Supreme Court in **Nicholas Kiptoo Arap Korir Salat v Independent Electoral and Boundaries Commission & 7 others [2014] eKLR** stated that:

“deviations from and non-compliance with procedural rules should not automatically lead to striking out of proceedings unless the deviation goes to the root of the case.”

18. Similarly, courts have consistently held that procedural technicalities should not defeat substantive justice. In the present case, even assuming there is a dispute regarding payment of costs, it does not go to the jurisdiction of the Court to entertain an application anchored on statutory provisions for enforcement of arbitral awards. The Court therefore finds that this objection does not render the application incompetent.

19. The second issue raised by the Respondent is that the application is premature on account of a pending clarification request allegedly made under Section 34 of the Arbitration Act. The Respondent contends that because the Applicant sought clarification of the phrase “handing over,” the award is not final and therefore not capable of enforcement. The Court does not agree with this position.

20. Section 32A of the Arbitration Act provides that, “*except as otherwise agreed by the parties, an arbitral award shall be final and binding upon the parties to it.*” The doctrine of finality is central to arbitration and is intended to prevent endless litigation over matters already determined by the arbitrator.

21. The Supreme Court in **Nyutu Agrovet Limited v Airtel Networks Kenya Limited & another [2019] eKLR** emphasized that “*the hallmark of arbitration is finality*” and that courts should be slow to interfere except within the narrow confines provided by statute. In this case, it is not disputed that no clarification was issued by the arbitrator and that the arbitrator is now *functus officio*. A mere request for clarification, which was not determined, cannot suspend or invalidate an otherwise final award. In the absence of any proceedings under Section 35 to set aside the award, the Court finds that the award remains final, binding, and ripe for recognition and enforcement.

22. The third issue concerns whether the arbitral award is capable of enforcement given the wording “handing over” of the suit property. The Respondent contends that the Court would be rewriting the award if it interprets “handing over” to include transfer of title or execution of conveyancing documents.

23. It is correct that a Court has no jurisdiction to rewrite an arbitral award or substitute its own decision for that of the arbitrator. This principle was clearly stated in **Anne Mumbi Hinga v Victoria Njoki Gathara [2009] eKLR** where the Court of Appeal held that:

“the court has no jurisdiction to sit on appeal over the merits of an arbitral award and it cannot rewrite the award or grant remedies not awarded by the arbitrator.”

24. However, the Court is equally obligated to give effect to the award in a manner that makes it effective rather than illusory. The phrase “handing over” in the context of a completed sale transaction and payment of consideration cannot be read in isolation. It necessarily implies relinquishment of possession and all acts necessary to perfect the transaction.

25. In **Republic v District Land Registrar Uasin Gishu & another [2014] eKLR** the Court held that the process of transfer of land is a legal consequence of the transaction and that courts are not required to micromanage conveyancing steps once substantive orders have been issued. The Court therefore finds that the award is sufficiently clear and capable of enforcement without any rewriting, and that “handing over” includes vacant possession and execution of documents necessary to give effect to the arbitral decision.

26. The final issue raised is whether enforcement of the award would offend public policy under the Land Control Act on the basis

that no Land Control Board consent has been obtained. The Respondent argues that the award compels a transaction involving agricultural land without compliance with statutory requirements and is therefore illegal. The Court is not persuaded by this argument. The concept of public policy in arbitration is applied restrictively.

27. In **Christ for All Nations v Apollo Insurance Co. Ltd [2002] 2 EA 366**, the Court stated that “*public policy is a most unruly horse*” and that it should only be invoked where an award is so fundamentally offensive to Kenyan law as to shock the conscience of the Court.

28. In the present case, there is no evidence that the arbitral award directs the Court to violate the law. Rather, it directs performance of obligations arising from a contractual relationship. If any statutory steps such as obtaining Land Control Board consent are required, those are procedural consequences of implementation which are handled in the course of the implementation of the award once adopted as a decree of this court and not grounds to nullify or refuse enforcement of the award. To hold otherwise would allow a party to defeat an arbitral award by simply refusing to cooperate in statutory

formalities, which would undermine both contractual sanctity and the arbitration framework.

29. Having considered all the issues raised, the Court is satisfied that none of the objections meets the threshold under Section 37 of the Arbitration Act to justify refusal of recognition or enforcement of the arbitral award. The award remains valid, binding, and enforceable, and no legal or procedural impediment has been demonstrated to bar its recognition by this Court.

30. Accordingly, the Court finds that the Chamber Summons application dated 1st August 2025 is merited and proceeds to make the following orders:

a. The Final Arbitral Award delivered by Shafiq Taibjee on 4th November 2023 is hereby recognized and adopted as a judgment of this Court.

b. Leave is hereby granted to the Applicant to enforce the said arbitral award as a decree of this Court.

c. The costs of this application are awarded to the Applicant.

It is so ordered.

Dated, Signed and Delivered Virtually this 30th Day of April, 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. h/b for Mrs. Randa for the Applicant

Mr. Kariuki for the Respondent

Court Assistant: Alex

M.D. MWANGI
JUDGE