



Navayuga Infotech PVT Limited v Kenya Hospital Association (Miscellaneous Application E040 of 2021) [2026] KEHC 5818 (KLR) (Commercial and Tax) (22 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E040 OF 2021**

BK NJOROGE, J

APRIL 22, 2026

BETWEEN

NAVAYUGA INFOTECH PVT LIMITED APPLICANT

AND

THE KENYA HOSPITAL ASSOCIATION RESPONDENT

RULING

1. Before the Court are two Applications filed by each party for determination. The 1st Application is a Notice of Motion dated 19th October, 2021 seeking the following orders;
 - a) The Arbitral award of Justice Aaron Ringera (Rtd), FCIArb, Chartered Arbitrator made and published on 05/05/2021 and corrected on 22/07/2021 be set aside;
 - b) Costs of this Application be provided for.
2. The Application was supported by the Affidavit of Dr. K. Babu Rao. The Applicant contended that the Arbitrator erred by faulting it for failing to complete the project by a non-existent completion date. It is argued that the Tribunal improperly introduced and relied on a “go-live” date of 14th June 2013. This date was neither contemplated in the parties’ contract nor within the terms of reference to arbitration, thereby effectively rewriting the agreement between the parties. According to the Applicant, this erroneous finding influenced the decision in favour of the Claimant and led to the dismissal of the Applicant’s counterclaim, rendering the Award irregular and legally unsound.
3. The Applicant further asserted that the Tribunal failed to properly consider the evidence and submissions regarding the Respondent’s alleged lack of cooperation in the implementation of the project and instead adopted a one-sided approach. It was also alleged that the Arbitrator exhibited bias by accepting the Respondent’s submissions that the Applicant had not discharged its burden of proof



- despite evidence being tendered on delivery of software modules and staff training. Consequently, the Applicant argued that the finding of breach of contract, the award of USD 490,400 in favour of the Respondent, and the dismissal of the Counterclaim of USD 417,200 are unsupported by law and fact, and that enforcement of the Award would result in a miscarriage of justice.
4. The Application was opposed vide the Replying Affidavit sworn on 15th June 2022 and the Grounds of Opposition dated 24th May 2022. The grounds were as follows;
 - a. The application is incompetent for having been brought outside the time stipulated by Section 35(3) of the *Arbitration Act*, 1995. This point will be taken by way of preliminary objection.
 - b. The applicant has not shown sufficient cause to warrant the setting aside of the arbitral award.
 - c. The arbitral award was made within the scope of the reference to the arbitrator.
 - d. By the application, the applicant is inviting the court to re-evaluate the evidence tendered before the arbitral tribunal and come up with a different conclusion from that reached by the arbitrator. The applicant is asking the court to sit on appeal over the arbitral award.
 5. In the Replying Affidavit, the Respondent averred that the findings made by the Arbitrator fell within the scope of his reference and the Application to set aside the award lacks merit.
 6. The 2nd Application is a Chamber Summons by the Respondent dated 25th October, 2022 seeking the following orders;
 - a. The final arbitral award made and published by Justice (Retired) Aaron Ringera on 5th May 2022 and corrected on 22nd July 2021 be enforced as a decree of this court.
 - b. A decree be issued in terms of the arbitral award.
 - c. The costs of this application be provided for.
 7. This Application was supported by the Affidavit of Gilbert Nyamweya Omoke who stated that a dispute arose between the parties. That by consent, the dispute was referred to arbitration and Mr. Paul Mwaniki Gachoka (as he then was) was appointed as the sole Arbitrator. Mr. Gachoka later recused himself on 5th August 2019, after which the parties appointed Justice (Retired) Aaron Ringera as the sole Arbitrator to determine the dispute based on the documents already filed. Mr. Justice Ringera subsequently published the arbitral award on 5th May 2021, allowing the claim by Kenya Hospital Association and dismissing the Counterclaim by Navayuga Infotech Pvt Limited. The Arbitrator also awarded the costs of the Claim, Counterclaim, and Arbitral proceedings to the Hospital.
 8. Thereafter, the Applicant filed an application seeking to set aside the award, which is the subject of this Ruling. The Hospital maintains that no sufficient grounds have been demonstrated to justify setting aside the award. On its part it therefore seeks enforcement of the Arbitral Award. It submits that it is fair and just for the enforcement application to be heard together with the setting aside application and that the award should be enforced without delay in the interests of justice.

Issues for determination

9. After carefully considering both Applications, the responses therewith, the written submissions and oral highlights by Counsel, the Court frames the following issues for determination:
 - a. Whether the arbitral award ought to be set aside, or
 - b. Whether the arbitral award should be recognized as a decree of the Court.



Analysis

10. It is undisputed that the Arbitrator issued the Arbitral Award on 5th May 2021 and notified the parties on the same date. Subsequently, on 19th July 2021, the Applicant's Advocates sought clarification from the Arbitrator regarding the commencement date for interest on the awarded sums. This is because the original award had indicated 9th May 2013. In response, the Arbitrator issued a correction on 22nd July 2021, revising the interest start date to 9th May 2018.
11. It was the Applicant's case that Section 34 of the *Arbitration Act* permits a party to seek correction or clarification of an arbitral award within 30 days of receiving it. This is as long as notice is given to the other party. Although the award was published on 5th May 2021, it was collected by the Applicant on 2nd July 2021 after payment of the arbitrator's fees. Upon reviewing the award, the Applicant identified errors and ambiguities and, by a letter dated 19th July 2021, requested the Arbitral Tribunal to correct them pursuant to Section 34(1)(a) of the Act.
12. According to the Respondent, under Section 34 of the *Arbitration Act*, the Applicant was required to seek correction of the Arbitral Award within 30 days of its publication on 5th May 2021. That is, on or before 5th June 2021, absent any agreement extending time, which did not exist in this case. However, the application for clarification and correction was made on 19th July 2021, approximately two months and fourteen days out of time. Consequently, the application was invalid, and the arbitrator lacked jurisdiction to issue the purported correction on 22nd July 2021, having already become functus officio upon expiry of the statutory period.
13. Section 34 of the *Arbitration Act* empowers the Arbitral Tribunal to correct any computation, clerical or typographical errors where an application for such correction is made within 30 days after receipt of the award. In whole, the section provides;
 34. Correction and interpretation of arbitral award; additional award
 - (1) Within thirty 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 common ground that the Arbitrator issued the Arbitral Award on 5th May 2021 and notified the parties on the same date. Subsequently, on 19th July 2021, the Applicant’s advocates sought clarification from the arbitrator. According to the Applicant,

“Although the award was published on 5th May 2021, it was collected by the Applicant on 2nd July 2021 after payment of the arbitrator’s fees.”

15. Section 34 above provides - Within thirty days after receipt of the arbitral award, unless a different period of time has been agreed upon by the parties. This brings us to the question, when was the award received?

16. The Court of Appeal’s decision in the case of University of Nairobi v Multiscope Consultancy Engineers Limited [2020] eKLR discussed this issue at length when it held: -

“...the Kenyan situation where statute does not require the arbitral tribunal to dispatch or send a signed copy to each party. For that reason, delivery happens when the arbitral tribunal either gives, yields possession, releases or makes available for collection a signed copy of the award to the parties. Actual receipt of the signed copy of the award by the party is not necessary. So that when the arbitral tribunal notifies parties that a signed copy of the award is ready for collection then, the date of notification is deemed to be the date of delivery and receipt of the award because it is on that date that the tribunal makes the signed copy available for collection by the parties.

Should it be any different because the arbitral tribunal has withheld the delivery of the award because of non payment of fees and expenses (Section 32B (3)? Counsel Ngatia argues that it would be a legal absurdity to deem that the award has been delivered when in fact it has been withheld. With respect I am unable to agree. Once the arbitral tribunal notifies the parties that the award is ready for collection upon payment of fees and expenses, then delivery will have happened as it is upon the parties to pay the fees and expenses. This is because the only obligation of the arbitral tribunal is to avail a signed copy of the award, of course subject to payment of fees and expenses which is an obligation of the parties. The tribunal having discharged that obligation, then delivery and receipt of the signed copy of the award is deemed received because any delay in actual collection can only be blamed on the parties. Default or inaction on the part of the parties does not delay or postpone delivery.”

17. Further, in Lantech (Africa) Limited v Geothermal Development Company ML HC Misc. Appl. No. E776 of 2020 [2020] eKLR, the Court held;

“(33) Delivery happens when the arbitral tribunal either gives, yields possession, releases or makes available for collection a signed copy of the award to the parties. In this regard therefore, our courts have held that the actual receipt of



the signed copy of the award by the party is not necessary and that the Award is deemed to have been received by the parties when the arbitral tribunal notifies parties that a signed copy of the award is ready for collection because it is on that date that the tribunal makes the signed copy available for collection by the parties.”

18. In light of the above, the Arbitral Award was received on 5th May 2021; therefore, the Applicant was required to seek correction of the Arbitral Award within 30 days of its publication on 5th May 2021, that is, on or before 5th June 2021. It is therefore clear that the Applicant did not comply with the above-mentioned provision; thus, the request for amendment was made outside the stipulated time when the Arbitrator was already functus officio on this matter.

19. The Court reiterates the holding in *Omar v Muigai* [2022] KEHC 303 (KLR);

“Section 37 of the *Arbitration Act* guides the court in determining whether or not it should recognize and enforce an award. The respondent’s case is based on an error in the computation of the award. I have perused the supplementary award dated 25th January 2021 and I note that the Arbitrator observed that: -

“9. Section 34 (1) of the *Arbitration Act* provides for a notice of motion to correct, in the arbitral award any computation errors, any clerical or typographical or other errors ‘within 30 days after receipt of the arbitral award’. Herein lies the difficulty. The award herein was delivered on 17th April 2020. The notice of motion to correct the award was filed on 29th October 2020. Whilst the parties may on their own agreement and consent correct this error, it appears to me that the arbitrator is bereft of jurisdiction to deal with this matter. With sympathy am afraid I must leave the correction to the parties to deal with. The error which is acknowledged is regretted. I must commend counsel for the claimant for acknowledgement of the error and implore him, in the same spirit to give credit to the respondent. That is all I may say on this issue.”

11. Section 34 of the *Arbitration Act* empowers the Arbitral Tribunal to correct any computation, clerical or typographical errors where an application for such correction is made within 30 days after receipt of the award. The respondent did not comply with the provisions of the said section and made his request for amendment outside the stipulated time.”

20. The Court is inclined to agree with the Respondent that having established that the Arbitrator’s correction of 22nd July 2021 was made without jurisdiction and is therefore a nullity, it follows that the Applicant cannot rely on that date to compute the three-month limitation period for filing an application to set aside the arbitral award. In the absence of a valid correction, time began to run from 5th May 2021, when the parties were notified of the award. This means the Applicant ought to have filed this application for setting aside the Arbitral Award by 5th August 2021. Since the application was instead filed on 21st October 2021, it was out of time and cannot be sustained.



21. On merits, the Court notes that the parties had agreed that one of the issues for determination by the Arbitral Tribunal was the go-live date of the project also referred to as the completion date. The Issue was framed as follows;
- “What was the project completion date (go-live date) under the Agreement between the Claimant and the Respondent.”
22. The Applicant submitted on a go-live date of 12th September, 2013 while the Respondent countered with a date for 31st July, 2013. The Arbitrator after considering all the facts, evidence and submissions made a finding of fact as follows;
- “The Upshot is that I find as a fact that the project completion date (go-live date) for the project under the agreement between the and the Respondent was 14th June, 2013.”
23. The Applicant faults the Arbitrator for having reached a finding of fact on the go-live date that was different from that submitted by either party. The short answer is that this would amount to an appeal on an issue of fact. There is no automatic right of appeal to arbitral awards in Kenya, unless parties have agreed to retain that right in the Arbitral Agreement. This Court is bound by the Supreme Court of Kenya decision in *Nyutu Agrovet Limited v Airtel Networks Kenya Limited Chartered Institute of Arbitrators-Kenya Branch* [2019] KESC 11 (KLR). The Arbitrator reached a finding of fact that was binding upon the parties. They had subjected themselves to the finality of such a finding as they did not agree on a right of appeal. They remain bound by that finding. They cannot raise it to this Court as it would amount to an Appeal. The appellate process is one that the parties clearly wanted to give a wide step. A party cannot seek to step back into the appellate process under the guise of an application for setting aside an arbitral award.
24. The Applicant’s Application is hereby dismissed.
25. With regard to the second Application dated 25th October, 2022 for recognition and enforcement, the Court notes that the recognition and enforcement of arbitral awards is governed by Sections 36 and 37 of the *Arbitration Act*. Section 36 of the *Arbitration Act* confirms the binding nature of domestic arbitral awards. It requires a party seeking enforcement of such awards to avail to the Court either the original arbitral award and the original arbitration agreement or their certified copies.
26. The Applicant has already availed to this Court certified copies of the arbitral award and the arbitration agreement. It follows that the application for recognition of the award has no impediment. The Respondent’s Application is hereby allowed.
27. As to costs, the same lie at the discretion of this Court. Costs ordinarily follow the event. There is no reason to deny the successful party The Kenya Hospital Association the costs of the two applications.

Determination

28. The Court makes a finding on the two applications for consideration as follows;
- a. The Applicant’s Application by way of a Notice of Motion dated Notice of Motion dated 19th October, 2021 is dismissed with costs to the Respondent.
 - b. The Application by The Kenya Hospital Association by way of a Chamber Summons dated 25th October, 2022 I s allowed as follows;



- i. The final Arbitral Award made and published by Justice (Retired) Aaron Ringera on 5th May, 2022 be and is hereby enforced as a decree of this Court.
- ii. A decree be issued in terms of the Arbitral Award dated 5th May, 2022.
- iii. The Costs of the Application be borne by the Respondent Navayuga Infotech PVT Limited.

29. It is so ordered.

30. This file be marked as closed.

DATED, SIGNED AND DELIVERED AT MILIMANI THIS 22ND DAY OF APRIL, 2026.

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

N/A for the Applicant.

Miss Saina holding brief for Mr. Kiragu Kimani for the Respondent.

Mr. John Paul - Court Assistant.

