



Parbat Siyani Construction Limited v Aluken Trading Limited (Miscellaneous Civil Application E050 of 2025) [2026] KEHC 5601 (KLR) (Commercial and Tax) (17 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5601 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION E050 OF 2025**

MA OTIENO, J

APRIL 17, 2026

BETWEEN

PARBAT SIYANI CONSTRUCTION LIMITED APPLICANT

AND

ALUKEN TRADING LIMITED RESPONDENT

RULING

Introduction

1. Before this Court for determination is the Chamber Summons application dated 20th June 2025. The Applicant, Parbat Siyani Construction Limited, seeks the following primary orders:
 - i. That this Honourable Court be pleased to recognize and adopt the Final Award prepared by Martin Mbugua Mwangi, MCI Arb, dated 21st February 2025, as a judgment of this Court.
 - ii. That the Court grant leave to the Applicant to enforce the said Arbitral Award as a decree of this Court.
 - iii. That the costs of the application be borne by the Respondent.
2. The application is supported by the affidavit of Bipin Maru, the Applicant's contract coordinator, sworn on 20th June 2025, and is based on the grounds on its face.
3. The background of the dispute arises from a subcontract agreement dated 9th September 2021. The Applicant was the main contractor for the construction of 22 residential units for Norkan Investments Limited. The Respondent was engaged as a domestic subcontractor to carry out internal and external balustrading works for a sum of Kshs. 4,017,626.



4. According to the Applicant, the Respondent failed to meet the required standards of workmanship and caused significant delays to the project. Consequently, the Applicant terminated the subcontract on 21st July 2022 and engaged another contractor to complete the works.
5. Following a demand for breach of contract, the Applicant invoked the arbitration clause (Clause 31) of the subcontract. On 6th December 2023, the Chairperson of the Chartered Institute of Arbitrators appointed Mr. Martin Mbugua as the sole arbitrator.
6. The Arbitrator published a Final Award on 21st February 2025, awarding the Applicant several sums, including:
 - a. Kshs. 237,937.00 for recovery of advance payment.
 - b. Kshs. 4,266,300.00 as damages for delay in completion.
 - c. Kshs. 578,416.00 for Tribunal fees.
 - d. Kshs. 941,120.00 for legal representation costs.
 - e. Interest on the above sums at the rate of 14% per annum.
7. The Applicant averred that the Respondent has not challenged the award under Section 35 of the *Arbitration Act*, and the statutory timelines for doing so have lapsed. Furthermore, the Applicant confirmed compliance with Section 36(3) of the Act by providing the original arbitral award and the arbitration agreement.
8. In support of the application, the Applicant, through Mahinda Makori & Co. Advocates, filed submissions dated 29 October 2025.
9. Despite being served with the application and the hearing notice, the Respondent opted not to file any response.

Analysis and Determination

10. Having considered the application and submissions on record, the Court finds that the primary issue for determination is whether the Applicant has met the legal threshold for the recognition and enforcement of the arbitral award as a judgment of the Court under Section 36 of the *Arbitration Act*, 1995.
11. Under Section 36(1) of the *Arbitration Act*, an arbitral award shall be recognized as binding and enforced by the High Court upon application in writing. Enforcement is mandatory unless the opposing party demonstrates one or more grounds under Section 37 of the Act.
12. Section 36 of the *Arbitration Act* sets out the legal parameters governing the enforcement and adoption of an arbitral award in the following terms:

“ 36. Recognition and enforcement of awards

1. A domestic 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.
2.
3. Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement shall 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.

13. In *Samura Engineering Limited vs Don-Wood Co Ltd* [2014] eKLR it was held: -

“Of course, section 36(1) of the Act requires an application in writing for recognition and enforcement of an award to be made. But the application is subject to sections 36 and 37 of the Act, and I should add, to *the Constitution*. Section 36(3) of the Act makes it mandatory that the party applying for recognition and enforcement of the award should file: 1) the duly authenticated original award or a duly certified copy of it; and 2) the original arbitration agreement or a certified copy of it. Doubtless, the award must be filed...”

14. From the application and the affidavit in support thereof, the Court notes that the Applicant has annexed all documents required under Section 36(2) of the *Arbitration Act*, including a certified copy of the Final Award (Annexure BM-8) and the Subcontract Agreement (Annexure BM-4).
15. The Court notes that the Respondent was served with the application and all relevant documents, but failed to file any response or submissions.
16. Consequently, in the present case, there being no opposition filed against the application, and in the absence of an application to set aside the Award under Section 35 of the Act, the Court finds that the Applicant has established compliance with the statutory requirements for enforcement.
17. Additionally, none of the grounds under Section 37 of the *Arbitration Act* have been invoked or proved. The Award is not shown to violate public policy, the arbitration agreement is valid, the Respondent participated in the process, and the matters decided were within the scope of the arbitral reference.
18. In *Tanzania National Roads Agency v Kundan Singh Construction Ltd* [2013] eKLR, it was held that recognition and enforcement of arbitral awards is automatic unless refused under Section 37.
19. There being no legal impediment established to bar the enforcement of the Final Arbitral Award, I find that the Applicant’s application meritorious. The Court hereby grants the following orders:
 - i. The Final Arbitral Award dated 21st February 2025 by Martin Mbugua Mwangi, MCI Arb, be and is hereby recognized and adopted as a judgment of this Court.
 - ii. Leave be and is hereby granted to the Applicant to enforce the said Arbitral Award as a decree of this Court.
 - iii. Costs of this application are awarded to the Applicant.
20. It is so ordered.

DATED, SIGNED, AND DELIVERED AT NAIROBI THIS 17TH DAY OF APRIL 2026

HON. MR. JUSTICE MOSES ADO

JUDGE OF THE HIGH COURT

In the presence of: -

C/A – Moses

Makori..... for the Applicant



N/A..... for the Respondent

