



**Odyssey Capital Limited v Mburu & another (Civil Application E348 of 2024) [2025] KECA 447 (KLR) (7 March 2025) (Ruling)**

Neutral citation: [2025] KECA 447 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E348 OF 2024**

**M NGUGI, JA  
MARCH 7, 2025**

**BETWEEN**

**ODYSSEY CAPITAL LIMITED ..... APPLICANT**

**AND**

**DAN GAIKU MBURU ..... 1<sup>ST</sup> RESPONDENT**

**ANN WAMAITHA KANYUI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for leave to appeal against the ruling of the High Court (J.W.W. Mong'are J.) dated 24th June, 2024.) in Nairobi HCC Misc. Application No. E833 of 2023)*

**RULING**

1. In the application dated 8<sup>th</sup> July 2024, the applicant, Odyssey Capital Limited, asks the Court for leave to appeal against the ruling of the High Court (Mongare J.) dated 24<sup>th</sup> June, 2024 in Nairobi High Court Commercial Misc. Application No. E833 of 2023.
2. The application is brought under section 3A and 3B of the *Appellate Jurisdiction Act*, rule 41(1)(a)(ii), b(i), 44(1), (2), and 45(1) and (3)(a) of the Court of Appeal Rules, 2022.
3. The application is based on the grounds on its face and is supported by an affidavit sworn by its Director, Michael Maina. The background to the application as it emerges from the said affidavit is as follows. The dispute between parties hereto was referred to arbitration, and the arbitrator delivered an award on 1<sup>st</sup> December 2021.
4. Upon perusal of the award, the applicant sought clarification from the arbitrator pursuant to section 34 of the *Arbitration Act*. The arbitrator delivered the clarification on 29<sup>th</sup> January 2022. Dissatisfied with the award and the clarification, the applicant filed Misc. Application No. E098 of 2021 to challenge the award. The respondents filed Misc. Application No. E029 of 2022 seeking to enforce the award. Upon



hearing the applications, the High Court set aside the award and remitted the matter to the arbitrator for consideration of the applicant's supplementary bundle of documents which he had not considered.

5. The applicant avers that the arbitrator did not determine the dispute and render a fresh award but instead issued a supplementary award, and in doing so, irregularly and unlawfully resuscitated the aborted proceedings. The applicant then sought to set aside the supplementary award in its application in Misc. Application No. E833 of 2023. The respondents, on their part, filed an application for enforcement of the supplementary award in Misc. Application No. E098 of 2021.
6. The High Court (Mong'are J.) rendered one ruling on both applications, dated 24<sup>th</sup> June 2024. It dismissed the applications to set aside the supplementary award and allowed the application for enforcement filed in Misc. Application No. E098 of 2021. The applicant is dissatisfied by this ruling and thus seeks leave to appeal to this Court.
7. Appeals arising from section 35 of the *Arbitration Act* can only lie to this Court in the limited circumstances prescribed in *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch [2019] KESC 11 (KLR)*, and only with the leave of the Court. Under rule 55 of this Court's Rules, an application for leave to appeal is outside the remit of a single judge. The rule provides as follows:
  1. Each application, other than an application specified in subrule (2), shall be heard by a single judge: Provided that such application may be adjourned by the judge for determination by the Court.
  2. This rule shall not apply to—
    - a. an application for leave to appeal;
    - b. an application for a stay of execution, injunction, or stay of further proceedings;
  1. In *Kamimi Company [1976] Limited v Soil Merchants Kenya Limited (Civil Application E272 of 2022) [2023] KECA 1517 (KLR) (8 December 2023) (Ruling) Nyamweya JA.*, stated as follows:

“... the jurisdiction of a single Judge to hear and determine applications for extension of time to file an appeal only applies to those appeals that lie as of right under Rule 76 of the Court of Appeal Rules of 2022, which are the appeals that are subject to the time limits set in Rule 77 (2) of the Court of Appeal Rules of 2022. Secondly, applications that require leave to appeal, including the application before us to appeal against the orders of the High Court on setting aside of an arbitral award, are outside the jurisdiction of a single Judge.”(Emphasis added.)
8. I agree with the sentiments of my sister judge in the above matter. In light of the provisions of rule 55 (2), as a single judge, I have no jurisdiction to determine the present application, which properly falls for hearing and determination before a full bench of the Court.
9. I therefore direct that the application dated 8<sup>th</sup> July 2024 be listed before a full bench of this Court for hearing and determination.
10. There shall be no order as to costs.

**DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF MARCH, 2025**

**MUMBI NGUGI**



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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR.**

