



**Safaricom Plc v Kinetic Controls Limited (Civil Application
E532 of 2024) [2025] KECA 683 (KLR) (11 April 2025) (Ruling)**

Neutral citation: [2025] KECA 683 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E532 OF 2024**

M NGUGI, JA

APRIL 11, 2025

BETWEEN

SAFARICOM PLC APPLICANT

AND

KINETIC CONTROLS LIMITED RESPONDENT

*(Being an application for leave to appeal the judgment and order of
Visram J delivered on 3rd October, 2024 in Civil Appeal No. E980 of 2020)*

RULING

1. In the application dated 17th October 2024, the applicant, Safaricom PLC, seeks leave of this Court to appeal against the judgment of the High Court (Visram J.) dated 3rd October 2024.
2. The application is brought under section 3A and 3B of the *Appellate Jurisdiction Act*, rule 41 of the *Court of Appeal Rules 2022*, and section 39(3)(b) of the *Arbitration Act*. It is based on the grounds on its face and on an affidavit in support sworn by Daniel M. Ndaba, the applicant's Legal Counsel, Litigation, on 17th October 2024. The applicant avers that it entered into a contract dated 15th August 2013 with the respondent for maintenance services of the applicant's systems. Upon expiry of the contract, the applicant tendered and awarded the contract to a third party. The respondent then commenced arbitration proceedings against the applicant before Mr. A.F. Gross as the sole arbitrator, claiming damages of over Kshs. 600,000,000 for breach of contract. The applicant avers that the parties had reserved the right of appeal under section 39(2) of the *Arbitration Act*.
3. It is further averred that during a reconciliation exercise in the course of the arbitration, the applicant admitted a sum of Kshs, 23,247,871.25 as payable to the respondent. It denied owing Kshs. 15,824,845.39. By an award dated 20th July 2020, the arbitrator ordered the applicant to pay the respondent the sum of Kshs 39,072,716 with simple interest from 19th January, 2018 at 12% until payment in full.



4. The applicant avers that it paid to the respondent the undisputed amount. of Kshs. 23,247,871.25. However, that in exercise of its right of appeal reserved under section 39(2) of the Arbitration Act, it filed the appeal before the High Court, which dismissed it by the impugned judgment dated 24th October 2024, giving rise to this application for leave to appeal.
5. The respondent has filed a replying affidavit sworn by Gagandeep Singh Rehal on 25th October 2024 in opposition to the application, and both parties have filed submissions in support of their respective positions on the application.
6. Both parties hereto recognize that this Court assumes jurisdiction on a matter emanating from the High Court in respect of an arbitral award under section 35 of the Arbitration Act only in exceptional circumstances, as was enunciated in *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch* [2019] KESC 11 (KLR).
7. A decision on whether such exceptional circumstances exist to warrant the grant of leave to appeal, as with all matters in which the leave of the Court is required before an appeal can lie, is a matter for determination by a full bench of this Court, in accordance with rule 55(2)(b) of this Court's Rules. See *Kamimi Company (1976) Limited v Soil Merchants Kenya Limited* (Civil Application E272 of 2022) [2023] KECA 1517 (KLR) (8 December 2023) (Ruling).
8. The application before me, being an application for leave to appeal to this Court from a decision of the High Court on an application to set aside an arbitral award, properly falls for determination before a full bench of the Court. I therefore direct that the Registrar of this Court lists it before a full bench of the Court for hearing and determination. There shall be no order as to costs.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF APRIL, 2025.

MUMBI NGUGI

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR.

