



**Wuor v Beatpar Enterprises Limited (Civil Application
E537 of 2024) [2025] KECA 699 (KLR) (11 April 2025) (Ruling)**

Neutral citation: [2025] KECA 699 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E537 OF 2024**

M NGUGI, JA

APRIL 11, 2025

BETWEEN

BAPINY MONTUEL WEJANG WUOR APPLICANT

AND

BEATPAR ENTERPRISES LIMITED RESPONDENT

*(Being an application for leave to file an appeal against the ruling/
order of the High Court Commercial and Tax Division (F. Mugambi
J.) dated 20th September 2024 in HCCC NO. E089 of 2023)*

RULING

1. In its ruling dated 20th September 2024, the High Court (F. Mugambi J.) dismissed an application by Bapiny Montuel Wejang Wuor, the applicant before me, seeking to set aside an arbitral award in HCCOMMARB/E089/2023. The High Court found that the application was res judicata in light of prior proceedings in HCCC No. 501/2022.
2. Aggrieved by the ruling, the applicant has filed the application dated 15th October 2024, seeking leave to file an appeal to this Court. The application is expressed to be brought under section 35 of the Arbitration Act and section 3, 3A and 3B of the Appellate Jurisdiction Act.
3. The grounds forming the basis of the application are set out on its face and in an affidavit in support of the application sworn by the applicant, though the date of its swearing is not indicated. The applicant avers that he has sought and obtained leave from the High Court to appeal against the ruling and has since filed a notice of appeal; that the intended appeal raises arguable points of law and has high chances of success; and that the determination by the High Court amounts to a gross and manifest injustice, and is contrary to the Arbitration Act.
4. Briefly, the background to the application as it emerges from the applicant's affidavit is that on 21st November 2024 (sic), Mr. George Eshuchi, acting as sole arbitrator, delivered an award against the



applicant for breach of a settlement agreement between the applicant and the respondent, and directed, inter alia, that the applicant herein pays to the respondent the sum of USD 124,072.32 together with interest at 17% p.a. from 11th December 2016 within 10 days of publication of the award; an order for immediate auction of L.R No. 12882/28 Karen Ngong View Estate, the proceeds of which be applied towards payment to the claimant in accordance with the arbitrator's award.

5. The applicant avers that he applied to set aside the award on a number of grounds, among others, that the arbitration proceedings that led to the award were based on an agreement that is not valid under and was contrary to the laws of Kenya; that the award is in conflict with the public policy of Kenya; and that it contains decisions on matters beyond the scope of the reference to arbitration.
6. The applicant avers that in its ruling, the High Court failed to consider the substantive grounds raised in his application; failed to properly apply section 35 of the *Arbitration Act* and allowed the respondent's application for enforcement of the arbitral award. He further avers that his application could not have been res judicata in relation to HCCC No. 501/ 2022 for, among other reasons, that the determination in HCCC No. 501/2022 was made on the basis of a technicality relating to the time for filing of the application.
7. The respondent opposes the application by an affidavit sworn by its director, David Muriithi, on 25th October 2024. While terming the present application among other things, an abuse of the court process, the respondent makes various averments relating to the failure by the applicant to meet its obligations under a contract between them, leading to the arbitration and the arbitration award against the applicant. The respondent avers that there can be no fathomable or logical successful outcome of the proposed appeal as the issues the applicant seeks to raise have been placed before four different fora with the same outcome, and there is absolutely no chances of success of the appeal.
8. I have considered the application and the affidavits in support and opposition thereto. The applicant has filed submissions dated 31st January 2025, while the respondent filed submissions dated 30th January 2025. For reasons that will be clear shortly, I have not addressed myself to the submissions of the parties.
9. It is settled law 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. This was the holding in *Nyutu Agrovat Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch* [2019] KESC 11 (KLR). Additionally, 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 this Court is required before an appeal can lie before it, is a matter for determination by a full bench of the Court, in accordance with rule 55(2)(b) of this Court's Rules.
10. Accordingly, since the applicant seeks leave to appeal to this Court from a decision of the High Court on an application to set aside an arbitral award, his application properly falls for determination before a full bench of the Court. The application shall therefore be lists before a full bench of this 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

