



REPUBLIC OF KENYA



**KENYA LAW**  
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**County Government of Meru v Leopard Rock Mico Limited (Civil Application  
E013 of 2023) [2023] KECA 1401 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KECA 1401 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION E013 OF 2023  
W KARANJA, J MOHAMMED & AO MUCHELULE, JJA  
NOVEMBER 24, 2023**

**BETWEEN**

**COUNTY GOVERNMENT OF MERU ..... APPLICANT**

**AND**

**LEOPARD ROCK MICO LIMITED ..... RESPONDENT**

*(Being an application for leave to appeal the Ruling of the High Court of  
Kenya at Meru (J.O. Otieno, J.) dated 22nd January, 2021 in Misc Application  
No. 1 of 2020 Consolidated with Misc Application No. E078 of 2020)*

**RULING**

1. The applicant County Government Of Meru seeks the leave of this Court to appeal against the ruling of the High Court at Meru (P. J. Otieno, J.) dated 22<sup>nd</sup> January, 2021 in Meru Misc. Application No. 1 of 2020 as consolidated with Meru Misc. Application No. E78 of 2020 arising from a decision made under sections 35 and 36 of the Arbitration Act.
2. The application is expressed to be premised on Article 159(2)(d) of the Constitution and Sections 3 and 3A of the Appellate Jurisdiction Act. To start with, it is pertinent to state that the issue of leave to appeal from an arbitral decision made under Sections 35 and 36 of the Arbitration Act is a novel one, and courts are still groping in the dark as to the law and procedure that should guide the same. The reason for this is that before the Supreme Court decision in Nyutu Agrovet, no appeal could lie against a decision made pursuant to Section 35 of the Arbitration Act. Although the Supreme Court opened that narrow window to allow for limited appeals arising from that section, no procedures have been set down on how a court can be moved to grant leave. Thus some parties seek leave within the appeal, others invoke Article 159(2)(d) of the Constitution, while others invoke this Court's original jurisdiction.



3. There being no rules on how to move this Court for the said leave, this Court had adopted a liberal approach to ensure that the said applications are heard and determined on merit regardless of the law cited to anchor such applications. Addressing the issue of leave to appeal in arbitration matters, and in the *Nyutu Agrovet* case (*supra*) the Supreme Court stated at para 77:-

“In concluding on this issue, we agree with the Interested party to the extent that the only instance that an appeal may lie from the High Court to the Court of Appeal on a determination made under section 35 is where the High Court, in setting aside an arbitral award, has stepped outside the grounds set out in the said section and thereby made a decision so grave, so manifestly wrong and which has completely closed the door of justice to either of the parties. This circumscribed and narrow jurisdiction should also be sparingly exercised that only in the clearest of cases should the Court of Appeal assume jurisdiction.”

The applicant maintains that their appeal lies within the parameters set by the Supreme Court in the above case.

4. The respondent through its Managing Director (Michel Jean Andre Dechauffour) vide his replying affidavit sworn on 12<sup>th</sup> January, 2022 opposes the application and deposes that the application is just a delaying tactic on the part of the applicant not to honour the arbitral award. The respondent deposes that the matter does not meet the threshold set by the Supreme Court in the *Nyutu Agrovet* case and urges us to deny leave.
5. We have considered the application along with the rival affidavits by both parties and the submissions by both counsel.
6. Can this application wriggle through the narrow aperture opened by the Supreme Court in the *Nyutu Agrovet* Case? The main grounds relied on by the applicant in seeking leave are that the learned Judge went “outside Section 35 of the *Arbitration Act* by ignoring the points of law raised by the applicant; that the learned Judge declined the invitation to interrogate facts as held by the arbitrator; and failing to find that the award violates public policy.”
7. From the *Nyutu Agrovet* Case (*supra*) for us to grant leave to appeal, we need to satisfy ourselves that the High Court decision to dismiss the application to set aside the award was “so grave, so manifestly wrong and which has closed the door of justice to either of the parties.”
8. The Applicant has to demonstrate existent of exceptional circumstances that would call for the intervention of this Court in an arena where court intervention is discouraged. In this case, it is clear to us that the applicant only wants to have a second bite of the cherry on appeal, and by attacking the learned Judge’s failure to interrogate facts that were presented before the arbitrator, the applicant has stepped outside the jurisdiction endowed on the High Court under Section 35 of the *Arbitration Act*, as that goes to the merit attack of the arbitral award.
9. In our view, the applicant has failed to place itself within the parameters set by the Supreme Court in *Nyutu Agrovet* Case. This application therefore, fails and is dismissed accordingly with costs to the respondent.

**DATED AND DELIVERED AT NYERI THIS 24<sup>TH</sup> OF NOVEMBER, 2023.**

**W. KARANJA**

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**JUDGE OF APPEAL**



**JAMILA MOHAMMED**

.....

**JUDGE OF APPEAL**

**A. O. MUCHELULE**

.....

**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

