



Angar v Nairobi Academy (Holdings) Limited (Miscellaneous Application E210 of 2022) [2023] KEELRC 3054 (KLR) (24 November 2023) (Ruling)

Neutral citation: [2023] KEELRC 3054 (KLR)

REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
MISCELLANEOUS APPLICATION E210 OF 2022
NJ ABUODHA, J
NOVEMBER 24, 2023
IN THE MATTER OF THE ARBITRATION ACT,1995
IN THE MATTER OF AN APPLICATION FOR RECOGNITION &
ENFORCEMENT OF AN ARBITRATION AWARD

BETWEEN

PAUL AGWENGE ANGAR APPLICANT

AND

NAIROBI ACADEMY (HOLDINGS) LIMITED RESPONDENT

RULING

1. The Applicant filed a chamber Summons application dated 14th December, 2022. The Application is brought under Section 36 of the *Arbitration Act*; Rules 4(1), 9 and 11 of the *Arbitration Rules*,1997 and sections 12 & 20 of *Employment & Labour Relations Court Act* (Cap.234B).
2. The Applicant is seeking for orders of this court to recognize and adopt the Final Award between the parties herein dated and delivered at Nairobi on 31/10/2022 by mr David Njuguna Njoroge, FCI Arb, CS(Sole Arbitrator) of ksh 1,866,455.80/= as the judgment of this Honourable Court, leave of this court be granted to the Applicant to enforce the said adopted Award as decree of court and the costs be awarded to the Applicant.
3. The application is supported by the Affidavit of Paul Agwenge Angar the Applicant herein who averred that he entered in to two-year renewable contract of employment with the Respondent dated 01/01/2003. He was retained as the Head Swimming Coach for students in the Respondent's school establishment in Nairobi.



4. The Applicant averred that by a letter dated 13/02/2017 the Respondent terminated his services and summarily dismissed him from employment. The Applicant invoked Clause 15 of the Employment Contract and declared a dispute on wrongful and unfair termination of employment.
5. The Matter was on 30/01/2019 referred by the president Law Society of Kenya for Arbitration by a sole Arbitrator, Mr David Njuguna Njoroge.
6. The dispute was fully heard by the Arbitrator with the participation of both parties and their respective legal counsel, culminating in a final award delivered and published on 30/10/2022.
7. By the said award the Arbitrator established he was unfairly, wrongfully and unlawfully terminated and awarded damages and costs totaling to Ksh 1,866,455.80/= in addition to a certificate of service.
8. That the Respondent has failed, refused and or neglected to satisfy the Arbitral Award despite having been supplied with a copy of the Award. That the award has not been challenged or otherwise disputed since its delivery and publication on 31/10/2022.
9. The Applicant prayed that in the interest of justice the said Award be recognized, adopted and enforced as a judgment and decree do issue for execution.
10. In reply the Respondent also filed its reply sworn on 16th January, 2023 and opposed the Applicant's Application and averred that the Applicant's contract was terminated on grounds of gross misconduct. That on 17th January, 2017 through the Applicant's negligence a near drowning incident occurred at the school Swimming pool involving a student.
11. The Respondent averred that consequently the parties herein- were engaged in negotiations pursuant to clause 15 of the employment contract on settlement of all dues if any payable to the Applicant.
12. The Respondent averred parties finally resolved the dispute *vide* a binding Agreement executed by parties on 9th March, 2017 and with finality the Respondent paid all the dues owed to the Applicant. The Applicant unequivocally agreed to relinquish any and all other claims against the Respondent.
13. The Respondent further averred that despite the existence of the binding settlement the Applicant instituted arbitration proceedings against the Respondent on 7th May, 2019. The Sole Arbitrator appointed delivered his award on 31st October, 2022 requiring the Respondent to pay the Applicant Ksh 1,866,455.80/=
14. The Respondent averred that being aggrieved by the said decision moved to Honourable Court to have the award set aside pursuant to section 35 of the *Arbitration Act* *vide* an application dated 12th January, 2023 in ELRCMISC Application E004 of 2023.
15. That the court ordered for stay of the enforcement of the award until the application was heard and determined. Therefore, no recognition and enforcement proceedings should be entertained by the court. The same ought to be stayed.
16. The Respondent further averred that the Applicant's Application was premature having been lodged before lapse of 3 months stipulated under section 35 of the *Arbitration Act*, 1995 and therefore meant to burden the court with unnecessary matters.
17. The Respondent prayed that the same application be dismissed with costs.
18. The Applicant on 3rd July, 2023 filed a Ruling by Hon. Manani J. dated 15th June, 2023 in ELRC Misc. Application no E004 of 2023 where the Application to set aside the final award was dismissed.



Determination

19. It is not in dispute that the Applicant was employed by the Respondent and that his services were summarily terminated on March,2018. It is also not disputed that there is a final Award by sole Arbitrator one mr David Njuguna Njoroge of 31st October,2022 in the tune of ksh 1,866,455.80/=
20. The Respondent moved the court on 9th January,2023 seeking to set aside the Final Award under section 35 of the [Arbitration Act](#) as ELRC Misc. Application no E004 of 2023.
21. The Respondent prayed for the recognition and enforcement of the Final Award to be stayed until the application seeking to set aside the award was heard and determined. The Application has finally been heard and determined where a ruling was delivered on 15th June,2023. The Application was dismissed and the court noted that the Respondent did not meet the threshold of setting aside the Arbitration award.
22. I note that no appeal has been preferred by the Respondent after the application for setting aside the award was dismissed by the court.
23. This court is therefore called upon to recognize and adopt the Final Award of the Arbitration as its judgment and enforce the same as its decree.
24. The Court is governed by the [Arbitration Act](#) which provides as follows: -
Section 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.
25. This therefore means that the arbitration award will be recognized and enforced subject to conditions set out under section 37. Section 37 provides for grounds for refusal to enforce the award which are basically same as the grounds for setting aside the award.
26. When it comes to the party applying for enforceability of the ward the Act provides as follows: -
 - (3) Unless the High Court otherwise orders, the party relying on an arbitral award or applying for its enforcement must 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.
27. The Applicant has attached a certified copy of the final award and agreement. In the instant case, I find that the applicant has met the preconditions for the enforcement of the award. The onus therefore shifts to the Respondent to demonstrate why the award should not be adopted.
28. The Court in ELRC Misc. Application E004 of 2023 found that the Respondent did not meet the threshold to set aside the award. This means the award does not offend the grounds set out under section 37 and hence the Court should recognize and enforce the award.
29. The court having been faced with the same issue on enforcement of the Arbitral award in [Omar v Muigai](#) (Miscellaneous Application E005 of 2021) [2022] KEHC 303 (KLR) (Commercial and Tax) (28 April 2022) (Ruling) held as follows quoting the case of [Anne Mumbi Hinga v Victoria Njoki Gathara](#) [2009] eKLR the court held that;

“We therefore reiterate that there is no right for any court to intervene in the arbitral process, or in the award except in the situations specifically set out in the [Arbitration Act](#) or as previously agreed in advance by the parties and simultaneously there is no right of appeal



to the High Court or the Court of Appeal against an award except in the circumstances set out in section 39 of the *Arbitration Act*.”

30. The Court went on to find that: -

In view of the foregoing, I note that the respondent has not demonstrated that any of the grounds in Section 37 of the *Arbitration Act* exist in order to persuade the court to reject the application to recognize and enforce the arbitral award.

31. In this instant case therefore, I do not find any reason as to intervene in the Arbitrator’s award when the Respondent has not illustrated under section 37 of the *Arbitration Act* that there is any ground why the award should not be adopted and enforced. This court is also not sitting as an appeal court. No Appeal has been preferred since its application for setting aside the award was dismissed on 15th June, 2023. The Applicant cannot wait indefinitely to enjoy the fruits of the arbitration.

32. In conclusion the Claimant’s Application dated 14th December, 2022 is found merited and the court recognizes and adopts the Arbitral Final award of 31st October, 2022 at ksh 1,866,455.80/= as decree of the court and enforceable as a decree of this court. Costs and interest at court rates are awarded to the Applicant until payment in full.

33. It is so ordered

DATED AT NAIROBI THIS 24TH DAY OF NOVEMBER, 2023.

DELIVERED VIRTUALLY THIS 24TH DAY OF NOVEMBER, 2023.

ABUODHA NELSON JORUM

JUDGE

