



**Kiama v Elite Westlands Limited & another (Environment and Land Miscellaneous Application E115 of 2024) [2024] KEELC 7314 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7314 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E115 OF 2024  
LN MBUGUA, J  
OCTOBER 30, 2024**

**BETWEEN**

**WILLIAM KANYUA KIAMA ..... APPLICANT**

**AND**

**ELITE WESTLANDS LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**VAAL REAL ESTATE ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This matter is related to ELC Misc. E003 of 2024 which was filed by the Respondents herein and where a ruling has been delivered.
2. The Applicant's Chambers summons dated 27.6.2024 is for determination where he seeks orders that the final award of the sole arbitrator Prof. William Edward Kosar MCIArb published on 19.6.2024 be recognized as binding and thus be adopted as a judgment and decree of this court. He also seeks costs of the application and expenses incidental to the enforcement and execution of the award as well as any such further orders that the court may deem fit.
3. The application is premised on grounds on its face and on the Applicant's supporting affidavit sworn on 27.6.2024. He avers that the parties signed an agreement dated 17.8.2021 for the sale of an off plan apartment unit situated on LR No 209/2144/1 for a consideration of Kshs 12 million. A dispute arose and resulting in arbitration proceedings where the respondents were found to have been in breach of the said agreement.
4. That an award was given in the arbitration tribunal in the following terms;
  - i. A return of the Kshs 1,821,467/= unjustly held by the Respondents.
  - ii. The difference between the agreed purchase price and the sale price of the unit.



- iii. Damages of Kshs 2 million for the unlawful and bad faith in which the Respondents conducted business.
  - iv. Interest at 16% from 21.6.2022 until the date of payment.
  - v. Post judgment interest at 16%.
  - vi. Costs in favour of the claimant.
5. The application is opposed by the Respondents vide grounds of opposition dated 22.7.2024 where they contend that the court lacks jurisdiction to hear and determine the application by dint of exclusion by Section 37 of the *Arbitration Act* and Rule 4 (1) of the *Arbitration Rules* of 1997. The Respondents also filed a replying affidavit sworn by Nuru Said on 22.8.2024. She concedes that the parties entered into an agreement for sale dated 27.8.2021 for Kshs 12 million, but the applicant defaulted on the terms of the agreement, necessitating the rescission of that agreement.
6. That the claim was heard by the sole arbitrator who published an arbitral award on the 19.6.2024 but the said award should be set aside as it is illegal in accordance with Section 35 of the *Arbitration Act*.
7. I have considered all the issues raised herein. Apparently, after the arbitral award was published on 19.6.2024, each protagonist simultaneously filed a suit of their own almost a week later on 27<sup>th</sup> and 26<sup>th</sup> June 2024, respectively. The respondent's suit was however filed in the High court commercial division but was transferred to this court and registered as Misc E003 of 2024. In that suit, the current respondent was seeking orders to set aside the arbitration award which is the gist of their response in the current application.
8. This court has rendered a decision in the aforementioned suit Misc E003 of 2024 whereby the case has been dismissed. In the circumstances, there is no hurdle in the recognition of the arbitral award published on 19.6.2024 as a judgment of this court. The application dated 27.6.2024 is therefore allowed in the following terms;
1. The award of the sole arbitrator Prof. William Edward Kosar MCI Arb published on 19.6.2024 is hereby adopted as a judgment of this court.
  2. On costs, the court has taken into account that the protagonists had filed two separate suits of which the applicant herein has been awarded costs of that suit, as such, each party is to bear their own costs in respect of this particular suit (E115/2024).

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>th</sup> DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

M/s Achieng holding brief for Wanyama for Plaintiff

M/s Wanjau holding brief for Hassan for Defendant

Court assistant: Vena

