



REPUBLIC OF KENYA



KENYA LAW
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**Abondo Properties Limited v BLN Projects Limited (Civil Suit E032 of 2024)
[2025] KEHC 1227 (KLR) (Commercial and Tax) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1227 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E032 OF 2024
RC RUTTO, J
FEBRUARY 28, 2025**

BETWEEN

ABONDO PROPERTIES LIMITED PLAINTIFF

AND

BLN PROJECTS LIMITED RESPONDENT

RULING

1. Before this court for determination is a Chamber Summons Application dated 30th April 2024 seeking:
 - a. That the Application be heard ex-parte
 - b. That the Applicant has obtained an Arbitral Award which it wishes to enforce as a decree of the High Court.
 - c. That judgment be entered against the Respondent according to the Arbitral Award dated 8th November 2022 and filed in these proceedings for enforcement.
 - d. That the costs of this Application and the proceedings herein be borne by the Respondent.
2. The basis of the application is that, pursuant to a Joint Venture Agreement (JVA) entered into by the parties on 8th October 2018 for the construction of a residential complex comprising 52 units on the Applicant's property, known as Land Reference Number 37/243/5, located in Nairobi West, Nairobi County, a dispute arose, leading to arbitration proceedings before Mr. Samuel Mbiriri Nderitu. An award dated 8th November 2022 was delivered in favour of the Applicant as follows:



- a. The Respondent shall pay to the Claimant the sum of Kshs 6,515,742. 54/= made up of special damages of Kshs 3,406,000/= and compensation for deferred rental income and interest in the sum of Kshs 3,109,742. 54/=.
 - b. The Respondent shall at its costs transfer to the Claimant or its nominee all the shares it holds in Stacha Limited, within 60 days of this award. The Respondent's directors and or their nominees shall resign from the Board of Stacha Limited within the said 60 days.
 - c. The Respondent shall pay to the Claimant the costs of these arbitral proceedings being: -
 - i. The deposit of fees and expenses of the arbitral tribunal paid by the claimant so far, together with any other amounts that may be paid by the Claimant in satisfaction of the arbitrator's final invoice, to enable it take up the award.
 - ii. Other legal expenses reasonably incurred by the Claimant in pursuing the claim against the Respondent. The amount of these costs is to be agreed by the parties within 30 days of the Claimant notifying the Respondent the amount it claims and failing such agreement, either party may apply to the arbitrator immediately thereafter for him to make an additional award on costs under Section 34 (5) of the Arbitration Act 1995.
 - d. I hereby grant the Respondent a 60 days' rest on interest on the award but if the amounts awarded and or owed under Paragraph A and C above or any portion thereof remain unpaid after 7th January 2023, the sum unpaid shall attract simple interest at the rate of 14% per annum, from 7th January 2023 until payment in full.
3. The Respondent did not file any response to the Application herein. Notably there are only two Affidavits of Service sworn by Mary Obuya filed on the CTS one sworn on 29th October 2024 confirming service of a hearing notice dated 29th October 2024 and the other sworn on 11th November 2024 confirming service of hearing notice dated 11th November 2024

Analysis and Determination

4. I have considered the Applicant's application in this matter and noted that the main issue for determination is whether the application meets the conditions for the enforcement of an arbitral award.
5. The High Court under section 36 of the Arbitration Act has the power to recognize and enforce domestic arbitral award on the following terms: -

“ 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.
- (2) ...
- (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.

(4) ...

(5) ...”

6. Section 37 of the *Arbitration Act* on the other hand, provides for grounds upon which the High Court may decline to recognize and/or enforce an arbitral award at the request of the party against whom it is to be enforced. It provides as follows: -

“ 37. Grounds for refusal of recognition or enforcement

(1) The recognition or enforcement of an arbitral award, irrespective of the state in which it was made, may be refused only—

(a) at the request of the party against whom it is invoked, if that party furnishes to the High Court proof that—

(i) a party to the arbitration agreement was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication of that law, under the law of the state where the arbitral award was made;

(iii) the party against whom the arbitral award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration, or it contains decisions on matters beyond the scope of the reference to arbitration, provided that if the decisions on matters referred to arbitration can be separated from those not so referred, that part of the arbitral award which contains decisions on matters referred to arbitration may be recognised and enforced; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement by the parties, was not in accordance with the law of the state where the arbitration took place; or

(vi) the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court of the state in which, or under the law of which, that arbitral award was made; or

(vii) the making of the arbitral award was induced or affected by fraud, bribery, corruption or undue influence;

(b) if the High Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of Kenya; or

(ii) the recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya.



(2)If an application for the setting aside or suspension of an arbitral award has been made to a court referred to in subsection (1)(a)(vi), the High Court may, if it considers it proper, adjourn its decision and may also, on the application of the party, claiming recognition or enforcement of the arbitral award, order the other party to provide appropriate security.”

7. As indicated at the beginning of this ruling, the Respondent has neither filed a response to the application nor submitted any opposition to the application herein. Consequently, there is no assertion or evidence before this Court demonstrating or establishing any of the grounds provided under Section 37 of the *Arbitration Act*, No. 4 of 1995, that would warrant this Court’s refusal to recognize and enforce the Arbitral Award dated 8th November 2022.
8. It is well established that courts will ordinarily recognize and enforce an Arbitral Award unless a party demonstrates that the award is affected by one or more of the prescribed grounds for refusal set out under Section 37 of the *Arbitration Act*. Therefore, in the absence of any grounds to vitiate the Arbitral Award under Section 37 of the *Arbitration Act*, the award ought to be enforced. However, this is subject to the condition that the provisions of Section 36 have been duly complied with.
9. In compliance with the provisions of Section 36(3) of the *Arbitration Act*, the Applicant has annexed to its affidavit a certified copy of the arbitral award but did not provide an original or duly certified copy of the agreement. What, then, is the implication of this omission?
10. Section 36(3) is framed in mandatory terms, requiring the court to first establish whether there was indeed an agreement to resolve disputes through arbitration before recognizing or enforcing an award. This necessitates the presence of an arbitration agreement. Additionally, the court must confirm that an award was subsequently issued, thereby justifying the need to provide an original or certified copy of the agreement or contract containing the arbitration clause.
11. The preconditions outlined are mandatory in nature. Failure to comply with them can result in the refusal to recognize or enforce an award. In the present application, the absence of an original arbitration agreement or a duly certified copy thereof makes it difficult for the court to recognize the award, as there is no basis upon which the court can act. This court cannot exercise its discretion to overlook the absence of the agreement or contract containing the arbitration clause. To borrow the words of Justice Gikonyo in the case of *Samura Engineering Limited v Don-Woods Company Limited* [2014] KEHC 5423 (KLR), where the court, while dismissing an application for enforcement of an award, stated, “Perhaps, the discretion would only entitle the court to accept the award irrespective of the state in which it was made in which case the court will accept an exemplification or a certified or duly authenticated copy thereof, but the documents must be present lest the court should be acting on nothing or anything which is never an acceptable judicial practice. To say the least, any practice to the contrary of what I have stated would be the most awful and extravagant exercise of discretion.”
12. The Court of Appeal while agreeing with the disposition of the trial court in the case of *Samura Engineering Limited v Don Woods Limited* [2019] KECA 43 (KLR) stated: -

“ ... The record is explicit that the appellant never complied with the above prerequisite. The trial court cannot therefore be faulted for vitiating the appellant’s application for enforcement of the Award for non-compliance with the above mandatory procedures.”
13. Guided by the above decision of the superior court, and since the application is premised on the provisions of Section 36 of the *Arbitration Act*, the preconditions stipulated therein must be complied with.



14. Having found that only the award was filed, and no agreement was presented upon which this court can rely on which is an omission that goes to the root of the orders sought herein, I hereby proceed to strike out the Chamber Summons Application dated 30th April 2024 with no orders as to costs.

Orders Accordingly.

RHODA RUTTO

JUDGE

DELIVERED, DATED AND SIGNED THIS 28TH DAY OF FEBRUARY 2025

For Applicant:

For Respondent:

Court Assistant:

