



REPUBLIC OF KENYA



**Enserve Limited v Belvin Traders Limited (Commercial Arbitration Cause E023 of 2023)  
[2025] KEHC 1126 (KLR) (Commercial and Tax) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1126 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL ARBITRATION CAUSE E023 OF 2023**

**PM MULWA, J**

**FEBRUARY 27, 2025**

**BETWEEN**

**ENSERVE LIMITED ..... APPLICANT**

**AND**

**BELVIN TRADERS LIMITED ..... RESPONDENT**

**RULING**

1. The subject of this ruling is the applicant's chamber summons application dated 12<sup>th</sup> April 2023 filed pursuant to Order 46 rule 18 of the Civil Procedure Rules, Section 36(1) of the *Arbitration Act* and rule 9 of the Arbitration Rules 1997.
2. The applicant prayed for an order to recognize and adopt the final arbitral award issued on 25<sup>th</sup> January 2022 as a binding order and decree of this court.
3. The grounds of the application were stated in its body and the supporting affidavit sworn by Adrian Kariuki Mwai, its Operations Manager, on the same date.
4. The grounds were that the parties herein entered into a joint venture agreement dated 3<sup>rd</sup> January 2020 for the purchase and disposal of a ship vessel 'SI HANG CAI SHA 1' and when a dispute arose it was referred to arbitration in accordance to clause 5.4 of the said agreement.
5. That the dispute was determined by an arbitrator, Mr. Simon Malonza who published his award on 25<sup>th</sup> January 2022 whereby the respondent was ordered to pay the applicant the arbitral award within 21 days which period has since lapsed.
6. The applicant's case was that it desires to execute the final arbitral award and it is therefore necessary for the court to adopt the same as a decree.



7. The applicant lodged a further affidavit sworn on 16<sup>th</sup> August 2023 by Adrian Kariuki Mwai. He averred that the arbitrator issued an award on costs dated 2<sup>nd</sup> May 2023 and prayed to also have it adopted as a final arbitral award.
8. In opposition to the instant application, the respondent filed grounds of opposition dated 15<sup>th</sup> September 2023, and contended that the arbitral award dealt with a dispute that was not contemplated by nor falling within the terms of the reference to arbitration and prayed to have the application dismissed with costs to the respondent.

**Analysis and determination:**

9. The applicant filed submissions dated 16<sup>th</sup> August 2023 while the respondent filed submissions dated 5<sup>th</sup> April 2024.
10. The court has considered the pleadings and submissions filed in this matter. The sole issue for determination is whether the arbitral award and the award on costs should be adopted as judgement of this court.
11. Section 36 of the *Arbitration Act* (the Act) states:
  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.”
12. Section 37 of the Act goes on to list instances whereby the court may refuse to recognise or enforce an arbitral award, one of them being when 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.
13. In this case the parties entered into a Joint Venture Agreement dated 3<sup>rd</sup> January 2020, clause 5.5 thereto stated that any dispute between the parties would be resolved through negotiations and if that failed, the dispute would be resolved through arbitration under the Nairobi Centre for International Arbitration Rules. The agreement was produced as ‘AKM-1’ in the applicant’s supporting affidavit.
14. The dispute was referred to arbitration and consequently an award was issued on 25<sup>th</sup> January 2022 whereby the tribunal ordered the respondent to pay the applicant a sum of Kshs. 2,910,000.00 within 14 days from the date the award would be taken up, which sum would carry the simple interest rate of 14% per annum from 30<sup>th</sup> August 2022 until payment in full. The award is produced as ‘AKM-3’ in the applicant’s supporting affidavit.
15. The applicant produced a further award on costs dated 2<sup>nd</sup> May 2023 issued by the tribunal. A certified copy of the award on costs was annexed as “AMK-5” in the applicant’s further affidavit. The tribunal ordered the respondent to pay the applicant a total sum of Kshs.1,473,273.92 being the total costs with respect to the arbitration.



16. The respondent's sole opposition to the recognition of the award is that the arbitral award dealt with a dispute that was not contemplated by nor falling within the terms of the reference to arbitration. It however did not expound on this assertion nor produce any evidence to explain to this court how the tribunal acted beyond its terms of reference.
17. I note that the respondent's counsel participated in the arbitral proceedings as seen in the body of the award issued by the tribunal.
18. In the absence of such evidence, and the applicant having produced certified copies of the arbitration agreement and the arbitral awards, I find merit in the application and hereby recognise and adopt the final arbitral award issued on 25<sup>th</sup> January 2022 and the award on costs dated 2nd May 2023 as binding orders and decrees of this court. Costs granted to the applicant.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 27TH DAY OF FEBRUARY 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Ms. Nkirote for Applicant

Mr. Thuku for Respondent

Court Assistant: Carlos

