



REPUBLIC OF KENYA



**Mereka v Kiarie (Civil Miscellaneous E1136 of 2024)  
[2025] KEHC 4748 (KLR) (Civ) (27 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 4748 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL MISCELLANEOUS E1136 OF 2024**

**TW CHERERE, J**

**MARCH 27, 2025**

**BETWEEN**

**DAVID MUKII MEREKA ..... APPLICANT**

**AND**

**HARRISON NJENGA KIARIE ..... RESPONDENT**

**RULING**

**Background**

1. By a sale agreement dated 28<sup>th</sup> September 2022, the Applicant agreed to sell LR. No. Nyandarua/oljoro Orok Salient 2261 to the Respondent for KES. 5,200,000. Clause 17 of the agreement provided for reference of disputes arising out of the sale agreement to a single arbitrator, with a determination to be made within 14 days in terms of clause 19. Clause 7 of the sale agreement provides that completion was to take place within 90 days, failure to which the balance of the purchase price would attract interest at the rate of 14% per annum.
2. Following the Respondent's delay in paying the total sale price, the Applicant invoked clause 17 and 19 and wrote to the Chairman of the Chartered Institute of Arbitrators via a letter dated 20<sup>th</sup> March 2024, upon which Mr. Antony Njogu was appointed as sole arbitrator.
3. The arbitrator rendered a final award on 09<sup>th</sup> October 2024, which was released on 26<sup>th</sup> November 2024. The Respondent failed to abide by the terms of the award. Consequently, the Applicant moved this Court by chamber summons dated 13<sup>th</sup> December 2024 under Section 36 of the *Arbitration Act* No. 4 of 1995 and Rule 9 of the *Arbitration Rules, 1997* seeking the following orders:



1. That the final award dated 09th October 2024 issued by Antony Njogu, the sole arbitrator, and released on 26th November 2024, be recognized as binding and enforceable by this Honourable Court;
2. That judgment be entered for the Applicant against the Respondent for KES. 774,000 with interest at 14% per annum from 11th January 2023 until payment in full;
3. That costs be borne by the Respondent.
4. The summons is supported by an affidavit sworn by the Applicant on 13<sup>th</sup> December 2024 and a further affidavit sworn on 07<sup>th</sup> February 2025, annexing, inter alia, the sale agreement dated 28<sup>th</sup> September 2022 and the arbitration award.
5. Although duly served, the Respondent neither filed a response nor attended court.

### **Issues for Determination**

6. I have considered the application and identified the issues for determination are as follows:
  1. Whether the final award dated 09<sup>th</sup> October 2024 issued by Antony Njogu and released on 26<sup>th</sup> November 2024 ought to be recognized as binding and enforceable by this Honourable Court;
  2. Whether judgment ought to be entered for the Applicant against the Respondent for KES. 774,000
  3. Whether Applicant is entitled to interest at 14% per annum from 11th January 2023 until payment in full;
  4. Whether the Respondent should bear the costs of this application;

### **Determination**

7. Section 36(1) of the *Arbitration Act* provides that:

“A domestic arbitral award shall be recognized as binding and, upon application in writing to the High Court, shall be enforced subject to the provisions of this section.”
8. Additionally, Section 32A of the *Arbitration Act* reinforces the principle of finality in arbitration by providing that:

“An arbitral award is final and binding upon the parties, and no recourse shall lie except as provided in the Act.”
9. These provisions emphasize the restricted nature of judicial intervention in arbitral proceedings. The role of the court is primarily to recognize and enforce arbitral awards, except in clearly defined exceptional circumstances as stipulated in the Act.
10. No material has been placed before this Court to demonstrate any grounds under Section 37 of the *Arbitration Act* that would warrant refusal to recognize or enforce the arbitral award.
11. In *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch* [2019] KESC 11 (KLR), the Supreme Court affirmed the finality of arbitral awards and emphasized that court intervention should be minimal.



12. In light of the foregoing, the final award dated 09<sup>th</sup> October 2024 and released on 26<sup>th</sup> November 2024 is recognized as binding and enforceable.
13. The Applicant seeks judgment for KES. 774,000. The arbitral award issued by Antony Njogu awarded this amount in favour of the Applicant. There being no opposition or challenge to the award, and the Respondent having been duly served but failing to participate in the proceedings, judgment is accordingly entered in favour of the Applicant in the sum of KES. 774,000 in line with the final award.
14. The Applicant also seeks interest at 14% per annum from 11<sup>th</sup> January 2023 until payment in full. Clause 7 of the sale agreement expressly provides that in the event completion does not occur within 90 days, the balance of the purchase price shall accrue interest at 14% per annum.
15. The Applicant specifically pleaded for interest from 11<sup>th</sup> January 2023, and the arbitral award affirmed this entitlement. Courts are bound to award what has been specifically pleaded. This principle was upheld in the Court of Appeal in *National Bank of Kenya v Pipeplastic Samkolit (K) Ltd and Another* NRB CA Civil Appeal No. 95 of 1995 [2001] eKLR where it observed that;

A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract, unless coercion, fraud or undue influence are pleaded and proved. There was not the remotest suggestion of coercion, fraud or undue influence in regard to the terms of the charge. ...”.
16. The prayer for interest having been specifically pleaded and subsequently awarded by the arbitrator, is found to be well-founded in both fact and law. Accordingly, it is affirmed and granted by this Court.
17. Costs follow the event. In *Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others* [2013] KEHC 5939 (KLR), the general rule is that costs follow the event, and the successful party should ordinarily be awarded costs unless the court for good reason directs otherwise. The Respondent, having failed to comply with the arbitral award shall bear the costs of this application.

### **Final Orders**

18. In the end, it is hereby ordered:
  1. The final award dated 09<sup>th</sup> October 2024 issued by Antony Njogu and released on 26<sup>th</sup> November 2024 is recognized and adopted as a judgment of this Court.
  2. Judgment is entered for the Applicant against the Respondent for KES. 774,000
  3. Respondent shall additionally pay interest at 14% per annum from 11<sup>th</sup> January 2023 until payment in full.
  4. The Respondent shall bear the costs of this application.

It is so ordered.

**DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF MARCH 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Mr. Wandere

For Applicant - Ms. Njoroge for Mereka & Co. Advocates



For Respondent - N/A

