



Galana Oil Kenya Limited v Geogaline Limited & another (Miscellaneous Application E795 of 2020) [2025] KEHC 3642 (KLR) (Commercial and Tax) (24 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E795 OF 2020**

H NAMISI, J

MARCH 24, 2025

BETWEEN

GALANA OIL KENYA LIMITED APPLICANT

AND

GEOGALINE LIMITED 1ST RESPONDENT

GEORGE NGATIRI MBUGUA 2ND RESPONDENT

RULING

1. Following a dispute between the parties, the matter was referred to arbitration. The Arbitral award was made on 25 March 2020. On 6 July 2020, the award as was adopted as an order of the Court. Judgement was entered in favor of the Applicant as against the Respondents. It was also directed that the Respondents shall bear the costs of the arbitration and award.
2. The Applicant's Chamber Summons dated 24 April 2024 seeks the following orders:
 - i. That the Award on Party/Party Bill of costs dated 15 April 2024 and issued by Joint Arbitrators, Mr. Joseph Nyoike Mutonyi and Collins O. Adipo be recognized as binding and enforceable by this Honorable Court;
 - ii. That Judgment on costs be entered in the terms of the Award in the sum of Kshs. 1,430, 366.00 inclusive of Arbitrators' fees as against the Respondents;
 - iii. That the Respondents do pay to the Applicant interest on the Award at the rate of 12% per annum from 25 March 2020;
 - iv. That costs of this application be provided for;
 - v. That such or further orders as deemed appropriate be granted.



3. The Application is brought under Section 1A of the Civil Procedure Act, Order 46 rules 17 and 18 of the Civil Procedure Rules and Section 36 of the Arbitration Act. It is supported by the Affidavit of Donald B. Kipkorir and premised on the following grounds:
 - a. By a Marketing License Agreement granted by the Applicant to the Respondents in 2016 subject to the related and applicable operating procedures and schedules, the Claimant licenced the Respondents and the Respondents agreed to operate a petrol service station, buy and sell products from the Claimant payable in cash on delivery.
 - b. On or about April, 2016 going forward, the Respondents requested for petroleum products supplies on credit from the Applicant as they organized their finances and/or resources to run the service station and the Applicant delivered the supplies.
 - c. In breach of the said agreement, the Respondents jointly and severally refused and/or neglected to repay in part or at all debt owing for goods supplied on credit and outstanding sum stood at Kshs. 3,739,948.20 as at 24 October 2018;
 - d. As per Article IX paragraph IV of the Marketing License Agreement, the dispute herein was referred by parties to Arbitration before Joint Arbitrators, Dr. Kibaya Imaana Laibuta (Chartered Arbitrator) and Mr. Joseph Nyoike Mutonyi (Arbitrator) on 6 June 2019;
 - e. The Joint Arbitrators, Dr. Kibaya Imaana Laibuta (Chartered Arbitrator) and Mr. Joseph Nyoike Mutonyi (Arbitrator) delivered the Final Arbitral Award on 25 March 2020;
 - f. The Award was confirmed and Judgment granted on 6 July 2020 and Decree issued on 26 July 2020;
 - g. We went back to the Joint Arbitrators, for assessment of Party/Party Bill of Costs now with Collins O. Adipo replacing Justice Dr. Kibaya Imaana Laibuta who was appointed to the Court of Appeal.
 - h. Award of Party/Party Bill of Costs was delivered on 15-4.24 in the sum of KShs. 1,430,366.00 inclusive of Arbitrators' fees; being KShs. 1,220,766.00 for costs and KShs. 209,600.00 being refund of Arbitrators' fees the Applicant paid.
 - i. The said award on costs be adopted as Judgment of this Court.
4. The Supporting Affidavit reiterates the grounds on the Application.
5. In response thereto, the Respondents raised a Preliminary Objection on the following grounds:
 - i. That the application is improperly before this Court as this file is a taxation file with a pending Bill of Costs that has not been withdrawn;
 - ii. Even if the said Bill of Costs were to be withdrawn this present Application would also stand dismissed as it would be hanging in the air;
 - iii. That the Application is incurably defective
6. The Respondents also filed a Further Affidavit in which they averred that the award of costs is unlawful as the replacement of the 2nd Arbitrator was done without their concurrence.
7. In a Notice of Withdrawal dated 27 July 2022 the Applicant withdrew the Bill of Costs. The Applicant filed a Supplementary Affidavit averred that each party nominated one Arbitrator to the arbitral proceedings. The nominations were separate and independent and did not need concurrence of the



other party. The Applicant's nominee, Dr. K. I. Laibuta was subsequently appointed as a Judge of the Court of Appeal, and the Applicant replaced him with Collins O. Adipo. At all material times, the Respondents were aware of the nomination and did not raise any objection.

8. The Application was canvassed by way of written submissions. By the time of writing this Ruling, the Respondents had not filed any submissions.
9. Section 36 of the [Arbitration Act](#), 1995 provides for the recognition and enforcement of awards as follows:
 - (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
10. Section 37 provides the grounds for refusal of recognition or enforcement as follows:
 - (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.

11. I also take cognisance of Section 35 of the Act that provide for setting aside arbitral awards. In particular, section 35 (3) provides that an application for setting aside the arbitral award may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award.
12. The Respondents have challenged the award on the basis that there is a pending Bill of Costs and that the appointment of Collins O. Adipo was done without their concurrence. The withdrawal of the Bill of Costs by the Applicant, leaves only one point of objection. The Applicant submitted that the replacement of their nominee did not require the concurrence of the Respondents. Besides, throughout the proceedings, the Respondents did not raise any objection.
13. Having keenly read the Application, response and submissions, I find that the Application dated 24 April 2024 is merited. The same is allowed with costs to the Applicant.

DATED AND DELIVERED AT NAIROBI THIS 24 DAY OF MARCH 2025.

HELENE R. NAMISI

JUDGE OF THE HIGH COURT

Delivered on virtual platform in the presence of:-

.Mr. Simiyu h/b Kipkorir.....for the Applicant

Mr. Njugunafor the Respondents

Libertine Achieng..... Court Assistant

