



**Bible Society of Kenya Registered Trustees v Tre-Tech Solutions Limited
(Miscellaneous Application E025 of 2024) [2025] KEHC 5107 (KLR)
(Commercial & Admiralty) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5107 (KLR)

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

**COMMERCIAL AND ADMIRALTY
MISCELLANEOUS APPLICATION E025 OF 2024**

RC RUTTO, J

APRIL 25, 2025

**IN THE MATTER OF THE ARBITRATION ACT, 1995 AND
IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT
OF THE ARBITRATION AWARD BY MS. MERCY OKIRO**

BETWEEN

BIBLE SOCIETY OF KENYA REGISTERED TRUSTEES APPLICANT

AND

TRE-TECH SOLUTIONS LIMITED RESPONDENT

RULING

1. The applicant moved court by way of a chamber summons application dated 16th April 2024 seeking that the final award dated 22nd August 2023 rendered by the Arbitral Tribunal be deemed as duly filed and that the award be recognised and enforced as a decree of this court.
2. The application is premised on the grounds that; the parties entered into a lease agreement but a dispute arose which ended in the respondent terminating the lease without giving the requisite notice and without paying the rent due to the claimant which stood at Kshs. 19,631,482.63; the lease agreement had an arbitration clause and based on it the parties agreed on a single arbitrator to arbitrate; the dispute was heard and determined and a final award dated 22nd August 2023 rendered.
3. The application is also supported by the affidavit of Elizabeth Muriuki sworn on 16th April 2024. It was deponed that the respondent terminated the lease without giving the requisite notice and without paying the rent due; the respondent remained adamant in not paying any of the rent arrears and it became impossible to resolve the dispute; the matter was referred to arbitration on the basis of an arbitration clause contained in the agreement; the dispute was heard and determined and a final award



rendered on 22nd August 2023 in which the respondent was ordered to pay the applicant a sum of Kshs.19,388,882.63 with interest at the rate of 14% from the date of publication of the award until payment in full. A copy of the final award was availed before court and the applicant prayed that the same be adopted as a judgment of this court so as to enable them execute.

4. In response, the respondent filed a replying affidavit sworn on 14th October 2024 by Nancy Maina. In that affidavit, the respondent gave a narrative of how the dispute ensued. She deponed that the respondent entered into a lease agreement with the applicant herein; it fell into arrears prompting the parties to engage in discussions wherein it was agreed that the applicant would subsequently take over the premisses after reconciliation of the accounts and general inventory; that in adopting the award, the court should consider the value of the furniture and household items at the point of takeover of the premises and the cost of leasing the said items which according to the respondent amounted to Kshs.26,880,000; that going by this, the applicant has already received the award sum in excess and in adopting the award the court should consider the amount. It was also stated that the award is already settled in full and it is only fair that the excess value of the items belonging to the respondent be paid to the respondent.
5. In response to the respondent's averments, the applicant swore a supplementary affidavit sworn on 22nd October 2024 by Elizabeth Muriuki. It deponed that the issues raised by the respondent are irrelevant in the context of the current application which seeks to enforce an award already made by the arbitral tribunal. Further, that the issues are res judicata the same having been raised before the arbitral tribunal and a determination made. They also provided numerous receipts to show that they purchased numerous household things.
6. The application was heard by way of submissions. At the time of writing this ruling, the respondent had not filed its submissions. The applicant submitted that it's application is one filed under section 36 of the Arbitration for recognition of arbitral awards. That the application was filed with together with certified copies of the award and the Lease executed between the parties as required under section 36(3). As such, the application ought to be allowed, unless the Respondent satisfies the conditions set out under Section 37 of the Act.
7. It was also submitted that the respondent has not alleged let alone prove any of the grounds under section 37 of the *Arbitration Act*. Reference was made to the High Court in Nairobi in Capture Solutions Limited v Nairobi City Water and Sewerage Company Limited [2020] eKLR where the court affirmed that under section 32(A) of the Act, an arbitral award is final and binding upon the parties and no recourse is available against the award otherwise than in the manner provided by the Act.
8. In addition, it was submitted that the claims raised by the respondent were all res judicata as the same were presented and considered by the tribunal. To support this argument reliance was placed in the case of Christopher Kenyariri vs Salama Beach [2017] eKLR as cited in Alfred Sagero Omweri v Kennedy Omweri Sagero [2021] eKLR.
9. The applicant urged the court to allow the application, and grant the costs of this application so as to enable them execute.

Analysis and determination

10. I have considered the pleadings by the parties as well as the applicant's submissions. The issue for determination before this court is –Whether the Arbitral Award dated 22nd August 2023 ought to be recognized, adopted, and enforced as a judgment of this Honourable Court. I do note that there is no dispute as to the existence of an arbitration clause in the lease agreement subject matter of the dispute and that there is no dispute as to the existence of the arbitral award. The only subsisting issue as raised



by the respondent in his replying affidavit is the assertions that the debt has been fully settled. They urge the court to consider the value of furniture and house hold items as from when the applicant was taking over the premises and the costs of leasing the said items which according to the applicant's last offer was Kshs.20,000/= per apartment per month bringing the total to Kshs.20,000/= x 16 apartments x 12 months x 7 years = Kshs.26,880,000/= excluding the cost of the furniture.

11. In response to the respondent assertions, the applicant stated that the issue is irrelevant and out of context in the current application. That the issues are res judicata the same having been raised before the arbitral tribunal and a determination made. Further, that the respondent has not alleged or proved any of the grounds under section 37 of the *Arbitration Act*.

12. Enforcement of an arbitral award, is guided by sections 36 and 37 of the *Arbitration Act*. Section 36 gives the High Court the power to recognize and enforce domestic arbitral award on the following terms:

“36(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)

13. Section 37 of the Act, 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. 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 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 decision 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 recognized 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 awards 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.”

13. In this instance, I am satisfied therefore that the Applicant has met the pre-condition for enforcement of the award as it has provided that certified copies of the Lease Agreement dated 22nd December 2014 which contain the arbitration clause under clause 19 thereto and a certified copy of the Final Arbitral Award published on 22nd August 2023 by the sole arbitrator, Mercy Okiro. In any event, both the lease agreement and the Final Award are not in dispute and all the respondent is seeking is for the court in adopting the award, should consider the value of the furniture and household items at the point of takeover of the premises and the cost of leasing the said items. Notably, this assertion has been controverted by the applicant.

14. This court notes that the grounds for consideration advanced by the respondent do not fall under the purview of section 37 of the Act. The respondent has not discharged his duty to demonstrate to court that the circumstances under section 37 have been met in order for the court not to consider and recognize the award. At any rate this court has been called to deal with the recognition of the award and not the settlement of the award or the nature and extent of the findings made by the arbitrator. Accordingly, the court will not descend into whether the issue of set off or reconciliation was before the arbitrator or res judicata applies as that is beyond the scope of the jurisdictional limit.



15. This court also takes note of the provision of Section 32(A) of the Act, which states that an arbitral award is final and binding upon the parties and no recourse is permitted except as provided under the Act. Consequently, unless it's shown that the requirements under section 37 have been met, the court's role is limited to either granting or denying the recognition or enforcement of an arbitral award. At this juncture, and in the absence of any other evidence, this court finds that the applicant has made a case for recognition and enforcement of the Final Award.
16. Consequently, I find and hold that the application dated 16th April 2024 for adoption and recognition of the Final Arbitral Award issued by Mercy Okiro on 22nd August 2023 is successful. The said Arbitral Award is hereby adopted and recognized as a judgment and decree of this court. The Applicant shall be awarded costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 25TH DAY OF APRIL, 2025.

RHODA RUTTO

JUDGE

In the presence

.....Applicant

.....For Respondent

Sam Court Assistant

