



United Nations v Hashi Energy Limited (In Liquidation) (Commercial Arbitration Cause E069 of 2024) [2025] KEHC 11489 (KLR) (Commercial and Tax) (30 July 2025) (Ruling)

Neutral citation: [2025] KEHC 11489 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL ARBITRATION CAUSE E069 OF 2024**

**JK NG'ARNG'AR, J
JULY 30, 2025**

BETWEEN

THE UNITED NATIONS APPLICANT

AND

HASHI ENERGY LIMITED (IN LIQUIDATION) RESPONDENT

RULING

1. The applicant has filed a Chamber Summons dated 1st November 2024. It prays for orders that:
 1. The international arbitral award delivered on 9th September 2024 (the Arbitral Award) by an Arbitral Tribunal appointed by the Permanent Court of Arbitration in PCA Case No. 2023-54 and filed in this Court on 11 October 2024 be recognised and enforced as a judgment of this Court;
 2. Leave be granted to the Applicant to enforce the Arbitral Award as a decree of this Court;
 3. This Court be pleased to direct that the costs of this Application be borne by the Respondent.
2. The application is supported by the grounds on the body of the Motion and the supporting affidavit of Mr. Lee Rovinescu, a partner at Freshfields US LLP and the legal representative of the applicant, sworn on 1st November 2024. According to the applicant, parties herein entered into a contract number PD/C0281/21 dated 8th October 2021 for the provision of fuel supply and services to support the United Nations Organization Stabilization Mission in the Democratic Republic of Congo. The contract contained an arbitration clause referring dispute arising out of it to arbitration. A dispute arose under the contract prompting the dispute to be referred to arbitration on 18th March 2023.
3. The dispute was heard in PCA Case No. 2023-54 in the Permanent Court of Arbitration. In its decision dated 9th September 2024, the tribunal found in favor of the applicant. It submitted a duly



- certified copy of the arbitral award accompanied by a duly certified copy of the contract on 11th October 2024. It urged that since no application for setting aside the award had been made, coupled with the fact that the arbitral award had not been challenged, the application ought to be allowed.
4. The application is opposed. The respondent filed a replying affidavit sworn by KVSJ Sastry, an insolvency practitioner who took over the affairs of the respondent as its liquidator on 3rd April 2023, sworn on 20th February 2025. The respondent deposed that it was placed under liquidation pursuant to a special resolution of its shareholders and followed by a meeting of its creditors on 3rd March 2023.
 5. In the circumstances, by dint of section 432 (2) of the [Insolvency Act](#), no legal proceedings may be commenced or continued against it without the approval of the High Court. In view of the foregoing, the respondent deposed that since no leave had been obtained before filing the present proceedings, in the wake of an existing liquidation order, the present application was incompetent, untenable and a non-starter. It prayed that the application be dismissed in totality.
 6. The applicant filed a supplementary sworn by Mr. Lee Rovinescu on 5th March 2025. The deponent reiterated the contents in its application to further add that by dint of sections 381 and 423 as well as part VI of the [Insolvency Act](#), a distinction was drawn between a liquidation order and voluntary liquidation. It stated that those provisions under section 432 (2) of the [Insolvency Act](#) governed companies liquidated by court.
 7. Under section 396 (2) of the [Insolvency Act](#), it contended that a company under voluntary liquidation maintained its legal and corporate status until dissolution. It therefore contended that no leave was required to bring the present proceedings. Be that as it may, the liquidator was vested with proper powers to defend the respondent as provided in section 6 part 2 of the Third Schedule to the [Insolvency Act](#). It urged that since no grounds had been adduced to find the application unmerited, the applicant urged this court to allow the application.
 8. The application was heard on the basis of the parties' written submissions. The applicant's written submissions and list of authorities both dated 20th March 2025. It submitted that it had complied with the provisions of section 36 of the [Arbitration Act](#) for enforcement and recognition of a foreign award. Looking at the respondent's reasons for refusal to enforce the arbitral award, the applicant submitted that the same did not fall within the provisions of section 37 of the [Arbitration Act](#) including the public policy ground. It submitted thus that to seek leave of the court before continuing or commencing legal proceedings was not a ground that went against public policy.
 9. Be that as it may, the applicant submitted that no leave was required before instituting the present matter since the liquidation in question was voluntary, separate and distinct from a liquidation arising from a court order. It further added that section 432 (2) of the [Insolvency Act](#) was only applicable after a liquidation order had been made or on the appointment of a provisional liquidator.
 10. Finally, the applicant submitted that the respondent raised this similar issue before the tribunal. In its decision, the arbitral tribunal found that section 432 (2) did not apply as it was in voluntary liquidation. In any event, since it was a jurisdictional issue, it ought to have been raised at the onset and not at this stage. Ultimately, it submitted that the court lacked jurisdiction on the correctness of the decision of the arbitral tribunal on the application of section 432 (2) of the [Insolvency Act](#).
 11. The respondent filed its written submissions with attached authorities dated 7th April 2025. It submitted that by dint of section 37 (b) (ii) of the [Arbitration Act](#), a court is at liberty to decline to enforce an arbitral award on grounds of public policy. It submitted that since it was under liquidation, hostile actions and executions against it were put on pause. It rejected the claim that the present proceedings were sanctioned on account of the fact that the liquidation arose voluntarily and not



by means of a court order. The respondent urged this court to consider that even where there is no automatic stay, it must arise without question when there is no dispute about a creditor's claim. To allow the application, it submitted, would abrogate the entire foundation of insolvency law and the principle of collectivity.

12. I have considered the application, the arbitral award, the contract, the responses thereto as well as the submissions and analyzed the law. The main issue for determination is whether this court should enforce the arbitral award dated 9th September 2024 by dint of section 36 of the Arbitration Act. Under subsection 2, an international arbitration award, as was the case herein, shall be recognized and binding and enforceable in accordance with the conventions in force that Kenya is a signatory at the time.
13. Section 37 of the same Act provides for instances in which a court may refuse to enforce an arbitral award. At section 37(1)(b)(ii), the court may refuse to enforce the award if it finds that the recognition or enforcement of the award is contrary to public policy. In this case, the respondent has urged this court to dismiss the application on grounds of the fact that it is under liquidation; a fact vehemently opposed by the applicant.
14. Before delving into the merits or otherwise of the grounds raised urging this court to refuse the enforcement of the arbitral award, I find it necessary to exposit the concept of public policy which is well entrenched in our jurisdiction. In its analysis, the Court of Appeal in *Tanzania National Roads Agency vs. Kundan Singh Construction Limited* [2014] KECA 251 (KLR) held as follows:

“...public policy which has been described as an indeterminate principle which fluctuates with the circumstances of the time. (see *Kenya Shell Limited v Kobil Petroleum Limited* [2006] eKLR). In the case of arbitral awards the following quotation by Ringera J. in *Christ for All Nations v Apollo Insurance Company Limited* [2002] 2 EA 351 which was adapted by the Court of Appeal in *Kenya Shell Limited v Kobil Petroleum* (supra) is instructive.

“although public policy is a most broad concept incapable of precise definition ... an award could be set aside under section 35(2)(b)(2) of the Arbitration Act as belief inconsistent with the public policy of Kenya if it was shown that either it was:

- (i) Inconsistent with the Constitution or other Laws of Kenya whether written or unwritten, or
- (ii) Inimical to the national interest of Kenya, or
- (iii) Contrary to justice and morality.”

15. Similarly, in *Glencore Grain Kenya Limited vs. TSS Grain Millers Limited* (2002) KLR 606, Onyancha, J. (as he then was) held as follows:

“This court however, is in addition, conscious of the fact that the Arbitral Tribunal and not this court is ordinarily seized with the full jurisdiction to consider and determine the contractual issues arising therefrom... Under ordinary circumstances therefore, this court may not have the legal authority to question the Arbitral Award made by the Tribunal. But in issues concerning public policy of Kenya, this court will in addition to what has been held hereinbefore, examine the award even at the stage of enforcement to determine whether or not the Arbitral Tribunal had jurisdiction in respect of the disputes relating to the underlying contract.”



16. Courts have further been cautioned to exercise caution when the defence of public policy is raised. See the case of *Richard vs. Mellish* [1824-34] All ER Rep 258, where the court held:
- “I protest against arguing too strongly upon public policy. It is a very unruly horse and when you get a stride you never know where it will carry you. It may lead you from sound law. It is never argued at all, but when the other points fail”.
17. In this case, the respondent argued that by dint of the voluntary liquidation in force, this court could not enforce the arbitral award pursuant to a special resolution of its shareholders and followed by a meeting of its creditors on 3rd March 2023. That on the strength of section 432 (2) of the *Insolvency Act*, no legal proceedings ought to be commenced or continued absent leave from the High Court.
18. As stated earlier, that argument was vehemently refuted by the applicant on the following grounds: firstly, a distinction ought to be drawn between a liquidation order decreed by a court and voluntary liquidation. While conceding that a court liquidation order required permission of the court for a person to institute liquidation proceedings, voluntary liquidation was not under that purview by dint of section 396 (2) of the *Insolvency Act*. It fortified that such a company under maintained its legal and corporate status until dissolution. Secondly, the applicant submitted that this issue ought to have been raised at the tribunal as a jurisdictional issue but the respondent sat duck. Be that as it may, the tribunal addressed its mind accordingly on this issue, bringing to foe the third ground disputing the respondent’s claim.
19. I have taken a keen scrutiny at the arbitral award. It is not gainsaid that during the proceedings of the tribunal, the respondent informed it that it was represented by its liquidator. In fact, on 19th March 2023, the tribunal was notified that the respondent had entered into a voluntary liquidation nominating Mr. KVSJ Sastry of Patel Shah & Joshi & Associates as its liquidator. It is therefore apparent that the issue of liquidation was apparent in the proceedings before the arbitral tribunal.
20. When determining the question of jurisdiction, the tribunal held that a distinction ought to be drawn between voluntary liquidation and one sanctioned by a court of law. In the former, which is the respondent’s case, the tribunal found that such a company does not lose its legal capacity and continues to act as represented by its liquidator. In interpreting the provisions of sections 396 (1) (b) & 2, 462 (1) & (3) and 482, and Part 2 of the Third Schedule, the arbitral tribunal opined that the liquidator then has powers to bring or defend any action or other legal proceeding on behalf of the company without approval from Kenyan courts.
21. It is therefore factual that this issue was not novel before this court. the tribunal considered the merits or otherwise and found that its jurisdiction was proper and that the applicant had properly instituted the dispute against the respondent, a company in voluntary liquidation. Irrespective of the fact that the respondent failed to challenge the jurisdiction or otherwise on the basis of that argument, the tribunal went ahead and addressed its mind on it. I find that accordingly, since that was well canvassed and decided upon, it ought to have been challenged in accordance with the provisions of section 14 of the *Arbitration Act*. That did not occur.
22. With that view in mind, I find that the grounds raised by the respondent do not amount to an issue of public policy. Section 36 (3) goes further to state that the party relying on an arbitral award or applying for its enforcement must furnish the original arbitral award or a duly certified copy of it and the original arbitration agreement or a duly certified copy of it. I find that the applicant had duly complied.



23. In view of the foregoing, I find that the applicant has met the threshold for enforcement and recognition of the arbitral award dated 9th September 2024. Accordingly, the Chamber Summons dated 1st November 2024 is allowed in the following terms:

1. The international arbitral award delivered on 9th September 2024 by an Arbitral Tribunal appointed by the Permanent Court of Arbitration in PCA Case No. 2023-54 and filed in this Court on 11 October 2024 be recognised and enforced as a judgment of this Court;
2. Leave be and is hereby granted to the applicant to enforce the Arbitral Award as a decree of this Court;
3. The costs of this application shall be borne by the respondent.

24. Leave to appeal is granted

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JULY, 2025.

.....
HON. JULIUS K. NG'ARNG'AR
JUDGE

Ruling delivered in the presence of Simon holding brief for Guyo for the applicant present, Wangari for Ogumbe for the Respondent present. Peter/Siele (Court Assistants)

