



**National Water Conservation & Pipeline Corporation v Runji & Partners
Consulting Engineers & Planners Ltd (Commercial Arbitration Cause E002 of 2020)
[2024] KEHC 1546 (KLR) (Commercial and Tax) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1546 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL ARBITRATION CAUSE E002 OF 2020**

PM MULWA, J

FEBRUARY 22, 2024

BETWEEN

**NATIONAL WATER CONSERVATION & PIPELINE
CORPORATION APPLICANT**

AND

**RUNJI & PARTNERS CONSULTING ENGINEERS & PLANNERS
LTD RESPONDENT**

RULING

1. This ruling is in respect of the respondent/applicant's (Runji & Partners) Chamber Summons amended on 16th June 2023, pursuant to this Court's order of 16th June 2023. The application is brought under sections 36 and 37 of the *Arbitration Act*. The applicant seeks the following orders:-
 - (1) That the Final Award dated 10th August 2020 by Tom Onyango Oketch together with the certificate of costs and expenses dated 14.7.2021 be recognized, adopted and enforced as the judgment and decree of this Honourable Court.
 - (2) That the Applicant/ Respondent, namely, National Water Conservation & Pipeline Corporation, do bear the costs of these proceedings.
2. The application is premised on the grounds on its face and the supporting affidavit sworn by the applicant's managing partner Runji Ngware on 16th June 2023. The grounds are that the respondent's ill-conceived application dated 6th November 2020 seeking to set aside the arbitral award was dismissed in its entirety on 22nd February 2021; that the said arbitral award and certificate of costs and expenses do satisfy all the requirements under the *Arbitration Act* and it is in the interests of justice that the same be enforced.



3. The background to this matter is that the respondent filed an application dated 6th November 2020 seeking to set aside the award. Through the ruling of 22nd February 2021, Hon. Mativo J. (as he then was) dismissed the respondent's application with costs upon finding that it had failed to establish the grounds for setting aside the award. Thereafter, the respondent filed an application dated 21st April 2021, seeking the recusal of Hon. Mativo J. (as he then was) which was also dismissed through a ruling dated 17th August 2021.
4. The instant application is unopposed and neither parties filed written submissions. When the application came up for hearing on 5th February 2024, the applicant's counsel Mr. Njagi urged the Court to recognize and enforce the award as the conditions have been met and the respondent's application to set aside the award was dismissed. There was no appearance for the respondent despite the fact that the hearing date was taken in presence of its counsel on 14th December 2023.

Analysis and Determination

5. The principles for consideration in adoption and enforcement of an arbitral award are set out under Section 36 of the [Arbitration Act](#), as follows: -

“ 36. Recognition and enforcement of awards

- (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) An international arbitration award shall be recognised as binding and enforced in accordance to the provisions of the New York Convention or any other convention to which Kenya is signatory and relating to arbitral awards.
- (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) If the arbitral award or arbitration agreement is not made in the English language, the party shall furnish a duly certified translation of it into the English language.
- (5) In this section, the expression “New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations General Assembly in New York on the 10th June, 1958, and acceded to by Kenya on the 10th February, 1989, with a reciprocity reservation.”

6. The applicant has annexed copies of the Final Arbitration Award by Tom Onyango Oketch dated 10th August 2020 and certificate of costs and expenses dated 14th July 2021. I also note that the arbitration agreement is contained under sub-clause 7.2 of Clause 57 of the General Conditions of Contract of the Contract dated 10th October 2012, which is on Court record.



7. Section 37 of the *Arbitration Act* enlists the circumstances under which the Court may decline to recognize or enforce and arbitral award as follows:

“37. Grounds for refusal of recognition or enforcement

- (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 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 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.”

8. The grounds above are similar to the grounds for setting aside an arbitral award under section 35 of the *Arbitration Act*. As earlier mentioned, the Court has already declined to set aside the award. Therefore, I find that the applicant has met the conditions for the enforcement of the award.

9. Accordingly, I allow the chamber summons amended on 16th June 2023 on the following terms:-

1. That the Final Award by Tom Onyango Oketch dated 10th August 2020 together with the certificate of costs and expenses dated 14th July 2021 be and is hereby recognized, and adopted a judgment of this Court.
2. That leave is granted to the applicant to enforce the award and the certificate of costs and expenses as a decree of this Court.
3. The respondent, National Water Conservation & Pipeline Corporation, shall bear the costs of this application.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF FEBRUARY 2024.

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P. MULWA

JUDGE

In the presence of:

Mr. Njagi for the Applicant

Mr. Opwaka for the Respondent

Court Assistant: Carlos

