



**Cubic Solution Limited v Spectre International Ltd (Miscellaneous Civil Application E262 of 2023) [2024] KEHC 2689 (KLR) (Commercial and Tax) (15 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2689 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
MISCELLANEOUS CIVIL APPLICATION E262 OF 2023**

**FG MUGAMBI, J**

**MARCH 15, 2024**

**BETWEEN**

**CUBIC SOLUTION LIMITED ..... APPLICANT**

**AND**

**SPECTRE INTERNATIONAL LTD ..... RESPONDENT**

**RULING**

**Background**

1. This ruling determines the application dated 28<sup>th</sup> March 2023 brought under section 3A of the *Civil Procedure Act* Cap. 21 of the Laws of Kenya, section 36 of the *Arbitration Act* 1995 and rule 9 of the Arbitration Ru/es, 1997. It seeks the adoption and recognition of the arbitral award as an order of this Court.
2. The application is premised on the grounds on the face of it and supported by the affidavit of William Omondi Otieno, the Chief Executive Officer of the applicant, sworn on 28<sup>th</sup> March 2023. The applicant also filed written submissions dated 14<sup>th</sup> November 2023.
3. The application is opposed by way of grounds of opposition dated 15<sup>th</sup> November 2023. The respondent did not file any submissions.

**Analysis**

4. The Court has carefully considered the pleadings, submissions and evidence on record. For the avoidance of doubt, there is no corresponding application to set aside the arbitral award before the Court. The grounds of opposition are vague and unsubstantiated. The respondent has not demonstrated in what way the application before the Court is defective neither has it been proved why it does not satisfy any of the grounds for granting of the orders sought.



5. The legal parameters for enforcement of an arbitral award are set out by section 36 of the [Arbitration Act](#) which requires that:

- “(1) An arbitral award, irrespective of the state in which it was made 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) Unless the High Court otherwise orders, the party replying on an arbitral award or applying for its enforcement shall furnish—
- i. the duly authenticated original arbitral award or a duly certified copy of it; and
  - ii. the original arbitration agreement or a duly certified copy of it.”

6. In support of its application the applicant has attached a copy of the Transportation Agreement between the parties, dated 26<sup>th</sup> January 2015 containing the arbitration clause under which the arbitration proceedings were invoked. Clause X(ii) provides that:

“Any dispute or controversy or agreement arising out of or in connection with this agreement which can not be settled amicably between the parties within thirty (30) days after the commencement of the amicable settlement negotiations shall be finally settled by arbitration.”

7. In addition, the claimant has also provided the Court with a certified copy of the final award, which is dated 3<sup>rd</sup> March 2023, and signed by the sole arbitrator, Paul Lilan.

### **Determination**

8. It is therefore the finding of this Court that the applicant has complied with the requirements of section 36 of the [Arbitration Act](#). The application dated 28<sup>th</sup> March 2023 is allowed as prayed, in the following terms:

- i. The final award prepared by Mr. Paul Lilan dated 3<sup>rd</sup> March 2023 is hereby recognized and adopted as a judgment of this court.
- ii. The applicant is granted leave to enforce the award as a decree of this court.
- iii. The respondent shall bear the costs of this application.

**DATED, SIGNED AND DELIVERED IN NAIROBI THIS 15<sup>TH</sup> DAY OF MARCH 2024.**

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**F. MUGAMBI**

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**JUDGE**

