

KENYA / JUDGMENT

Mhangami v Abedraboh

[2026] KEHC 13711 (KLR)

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COURT

High Court

CASE / FILE NUMBER

Commercial Arbitration Cause E076 of 2025

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REPUBLIC OF KENYA IN THE HIGH COURT OF KENYA AT NAIROBI COMMERCIAL AND TAX
DIVISION CASE NUMBER: HCCOMMARB/E076/2025 MANAGER

MHANGAMI.....APPLICANT -VERSUS- SURAYA

ABEDRABOH.....RESPONDENT

RULING

INTRODUCTION AND BACKGROUND

1. The Applicant has moved this Court by way of a Chamber Summons dated 24th July 2025 brought pursuant to Section 36 of the Arbitration Act, 1995 and Rule 9 of the Arbitration Rules, 1997. The Application seeks the following orders: - i. That the Arbitrator's Award made and published on 2nd December 2024 be recognized as binding between the parties and be enforced as a decree of this Honourable Court. ii. That the costs of the application be provided for.
2. The application is supported by the Affidavit of Manager Mhangami, the Applicant herein, sworn on 24th July 2025. The Applicant deposes that he was a tenant in the Respondent's house, House No. 78 Ineza, Runda, pursuant to a tenancy agreement dated 24th August 2023.
3. He avers that following a dispute arising out of the tenancy agreement, the parties mutually agreed to appoint Dr. Rukia Baruti as the sole arbitrator in accordance with the arbitration agreement contained in Clause 5(c)(i) of the tenancy agreement.
4. The Applicant further deposes that the Arbitrator heard and determined the dispute in his favour and rendered an arbitral award on 2nd December 2024. He contends that there is a need for the Award to be recognized as binding between the parties to facilitate its enforcement as a decree of the Court. The Applicant maintains that the Respondent will suffer no prejudice if the orders sought are granted and therefore urges the Court to allow the application.

5. The application is opposed by the Replying Affidavit of Suraya Abedraboh, the Respondent herein, sworn on 16th January 2026. The Respondent deposes that the application for recognition and enforcement of the arbitral award ought to be dismissed on the ground that the award is contrary to the public policy of Kenya.
6. She avers that the award was rendered in breach of her constitutional right to a fair hearing and the principles of natural justice, as the learned Arbitrator failed to consider material documentary and testimonial evidence placed before the tribunal.
7. The Respondent contends that she adduced extensive evidence regarding the circumstances surrounding the termination of the tenancy agreement, the condition of the demised premises upon exit, the contractual justification for retaining the security deposit, and filed comprehensive written submissions addressing the factual and legal issues in dispute.
8. She further deposes that the Arbitrator arbitrarily rejected the independent Home Inspection Report dated 2nd February 2024, without any factual or legal basis, despite it constituting expert evidence central to the dispute.
9. The Respondent further maintains that the Court is not being invited to sit on appeal against the arbitral award but to exercise its supervisory jurisdiction by declining recognition and enforcement of an award that offends the public policy of Kenya through its failure to accord her a fair hearing and to consider material evidence. She therefore urges the Court to dismiss the application with costs. APPLICANT'S SUBMISSIONS 10. The Applicant submits that he has satisfied the requirements for recognition and enforcement of the arbitral award under Sections 36 and 37 of the Arbitration Act by producing the arbitral award and the arbitration agreement.
11. He argues that the Respondent has failed to establish any of the statutory grounds for refusing recognition or enforcement. Relying on *Anne Mumbi Hinga v Victoria Njoki Gathara*, the Applicant submits that arbitral awards are intended to attain finality and that court intervention is strictly limited to the circumstances provided under the Arbitration Act. 12. The Applicant further submits that the Respondent's contention that the award is contrary to the public policy of Kenya is unfounded. Citing *Christ for All Nations v Apollo Insurance Co. Ltd* [2002] EA 366, he argues that the public policy exception is to be construed narrowly and cannot be invoked merely because a party is dissatisfied with the arbitrator's findings. 13. He maintains that the Respondent's challenge is, in substance, an appeal against the Arbitrator's evaluation of the evidence, which is impermissible in enforcement proceedings. He further relies on *Glencore Grain Ltd v TSS Grain Millers Ltd* to submit that disagreement with the Arbitrator's assessment of evidence does not amount to a denial of the right to a fair hearing, and on *Rwama Farmers Co-operative Society Ltd v Thika Coffee Mills Ltd* [2020] to contend that an arbitral award only offends public policy where it is illegal, immoral or contrary to fundamental legal principles. 14. Finally, the Applicant submits that the Respondent participated fully in the arbitral proceedings and was afforded an opportunity to present her evidence and

submissions.

15.He contends that the Arbitrator considered and gave reasons for rejecting the Home Inspection Report, and that the Court cannot re-evaluate the merits of that finding. 16.He further argues that the Respondent did not seek to set aside the arbitral award within the period prescribed under Section 35 of the Arbitration Act and, relying on *Mahinder Singh Channa v Nelson Muguku & Another*, submits that she is precluded from challenging its validity at the enforcement stage. 17.The Applicant therefore urges the Court to recognize and enforce the arbitral award as a decree of the Court with costs. **RESPONDENT'S SUBMISSIONS** 18.The Respondent submits that the arbitral award should not be recognized and enforced as it is contrary to the public policy of Kenya, having been rendered in violation of her right to a fair hearing and the principles of natural justice. 19.She contends that the learned Arbitrator failed to consider material documentary evidence, expert evidence and written submissions placed before the tribunal, thereby arriving at conclusions unsupported by the evidentiary record. She maintains that the Court is not being invited to sit on appeal against the arbitral award but to exercise its supervisory jurisdiction in declining enforcement of an award that offends public policy. 20.On the merits of the underlying dispute, the Respondent submits that the Applicant's purported termination of the tenancy agreement was unlawful and contrary to the parties' contractual intention. Relying on *Euromec International Limited v Shangdong Taikai Power Engineering Company Limited* [2021] and *Merthyr (South Wales) Ltd v Merthyr Tydfil County Borough Council*, she argues that contractual provisions must be construed in their proper factual and commercial context. She further relies on *Ali Abdi Mohamed v Kenya Shell & Company Limited* [2017] and *Lamb v Evans* [1893] to submit that the transfer clause contemplated an actual transfer outside Kenya supported by appropriate proof, which the Applicant failed to demonstrate, rendering the termination ineffective. 21.The Respondent further submits that, as the tenancy was not lawfully terminated, the Applicant remained liable for rent for the unexpired term of the tenancy and was in breach of the tenancy agreement by failing to maintain the premises in the condition required under the contract. 22.She contends that the independent Home Inspection Report established extensive damage to the property and justified the retention of the security deposit to offset the cost of repairs. Additionally, relying on *Jomo Kenyatta University of Agriculture and Technology v Kwanza Estate Limited* [2013] and *Sri Ashwin Bhanulal Desai v Bijay Kumar Manish Kumar* [2019], she submits that the Applicant remained contractually bound to repaint the premises upon determination of the tenancy, notwithstanding the alleged early termination. 23.She therefore urges the Court to decline recognition and enforcement of the arbitral award on grounds that it offends the public policy of Kenya. **ISSUES FOR DETERMINATION** 24.I have carefully considered the Chamber Summons dated 24th July 2025, the Supporting Affidavit and Replying Affidavit filed by the parties, the arbitral award dated 2nd December 2024, together with the rival written submissions and the authorities cited. In my view, the main issue that falls for determination is whether the Applicant has satisfied the requirements for recognition and enforcement of the arbitral award under Sections 36 and 37 of the Arbitration Act.

ANALYSIS AND DETERMINATION

25. The law governing the recognition and enforcement of arbitral awards is principally contained in Sections 36 and 37 of the Arbitration Act, No. 4 of 1995. Section 36 provides for recognition and enforcement of an arbitral award and states inter alia: - (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. 26. Section 37 outlines 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. (2) If an application for the setting aside or suspension of an arbitral award has been made to a court referred to in subsection (1)(a)(vi), the High Court may, if it considers it proper, adjourn its decision and may also, on the application of the party, claiming recognition or enforcement of the arbitral award, order the other party to provide appropriate security.” 27. The Court's jurisdiction at the enforcement stage is therefore circumscribed. It is not concerned with the correctness of the arbitral tribunal's findings of fact or law, but only with determining whether any of the statutory grounds for refusing recognition and enforcement have been established. This position was succinctly stated by the Court of Appeal in *Anne Mumbi Hinga v Victoria Njoki Gathara* [2009] KECA 466 (KLR) , where it was stated: - “We therefore reiterate that there is no

right for any court to intervene in the arbitral process or in the award except in the situations specifically set out in the Arbitration Act or as previously agreed in advance by the parties...”

28. In the present case, the Applicant has exhibited the arbitral award dated 2nd December 2024 together with the tenancy agreement containing the arbitration clause, thereby satisfying the procedural requirements under Section 36 of the Arbitration Act. The burden therefore shifts to the Respondent to establish any of the grounds set out under Section 37 for refusing recognition and enforcement. 29. The Respondent opposes the application on the singular ground that the award is contrary to the public policy of Kenya. Her contention is that the learned Arbitrator failed to consider material documentary and testimonial evidence, including the Home Inspection Report dated 2nd February 2024, as well as her written submissions, thereby violating her constitutional right to a fair hearing and the principles of natural justice. 30. Section 35 (2) (b) (ii) of the Arbitration Act provides for this ground, and states:-

(2) An arbitral award may be set aside by the High Court only if-

(a)

(b) 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 award is in conflict with the public policy of Kenya 31. The scope of the public policy was considered by Ringera J. (as he then was) in *Christ for All Nations vs Apollo Insurance Co. Ltd* [1999] LLR 1635 (CCK), where he set out the core grounds for setting aside an arbitral award under section 35(2) (b) (ii) of the Arbitration Act as being contrary to the public policy of Kenya: “I take the view that although public policy is a most broad concept incapable of precise definition, or that, as the common law judges of yonder years used to say, it is an unruly horse and when once you get astride of it you never know where it will carry you, an award could be set aside under section 35 (2) (b) (ii) of the Arbitration Act as being inconsistent with the Public policy of Kenya if it was shown that it was either;

a) Inconsistent with the Constitution or other laws of Kenya, whether written or unwritten; or

b) Inimical to the national interest of Kenya; or

c) Contrary to justice or morality The first category is clear enough. In the second category I would, without claiming to be exhaustive, include the interest of national defense and security, good diplomatic relations with friendly nations, and the economic prosperity of Kenya. In the third category, I would, again without claiming to be exhaustive, include such consideration as whether the award was induced by corruption or fraud or whether it was founded on a contract contrary to public morals.” 32. Having carefully considered the arbitral award, I am unable to agree with the Respondent's contention that she was denied a fair hearing. The award demonstrates that the Arbitrator identified the issues for determination, considered the pleadings, documentary evidence and submissions filed by both parties, and rendered reasoned findings on each issue. 33. In particular, the Arbitrator

expressly addressed the Home Inspection Report and explained the reasons for attaching little probative value to it. Whether that conclusion was right or wrong is a matter that falls within the exclusive province of the arbitral tribunal and does not, without more, constitute a breach of the rules of natural justice. 34. In essence, the Respondent's complaint is directed at the Arbitrator's evaluation of the evidence and the conclusions ultimately reached. Such complaints invite this Court to re-examine the merits of the arbitral award and substitute its own findings for those of the Arbitrator. That is not the role of this Court in proceedings brought under Section 36 of the Arbitration Act. 35. The Respondent's dissatisfaction with the manner in which the Arbitrator evaluated or weighed the evidence does not, without more, amount to a denial of the right to be heard. In *Kenya Pipeline Company Limited v Nyanza Club; Gaya & another (Interested Parties)* [2026] KEHC 1879 (KLR), the Court observed that: - "not every alleged procedural impropriety or dissatisfaction with the manner in which evidence is handled amounts to a breach of natural justice." More specifically, the Court further held that: - "the mere fact that the Arbitrator ultimately found the Respondent's evidence more persuasive does not translate into a denial of the Applicant's right to be heard." 36. This court has noted that the Respondent did not demonstrate that she was denied an opportunity to present her case before the tribunal. To the contrary, the record shows that she participated in the arbitral proceedings, filed documentary evidence, called evidence, and tendered written submissions. The mere fact that the Arbitrator did not accept her case in its entirety cannot be equated with procedural unfairness. 37. Further, there is no evidence that the Respondent invoked the procedure for setting aside the arbitral award under Section 35 of the Arbitration Act within the prescribed statutory period. While the failure to pursue that remedy does not automatically entitle an applicant to enforcement, it reinforces the principle that an arbitral award enjoys finality unless one of the limited statutory grounds for interference is established. 38. In the premises, I find that the Applicant has complied with the requirements of Section 36 of the Arbitration Act, while the Respondent has failed to establish any of the grounds contemplated under Section 37 for refusing recognition and enforcement of the arbitral award. Accordingly, the Applicant is entitled to the orders sought.

DISPOSITION

39. I find that the Chamber Summons dated 24th July 2025 is merited and is accordingly allowed in the following terms:

- (a) The Arbitrator's Award made and published on 2nd December 2024 is hereby recognised as binding between the parties and shall be enforced as a decree of this Honourable Court.
- (b) Costs shall be borne by the Respondent. Orders accordingly. DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17th DAY OF SEPTEMBER 2026. BW MURUNGA JUDGE
Delivered on virtual platform in the presence of: Wanjiku Karugo instructed by Wanjiku Karugo & Associates for the Appellant Kidenda Onyango Anami instructed for the Respondent (NA) Kevin Babu - Court Assistant

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Prepared on 28 October 2026 · Esheria