



Ramagon Construction Limited v The Board of Directors Sigalagala National Polytechnic Formerly Sigalagala Technical Training Institute & 2 others (Miscellaneous Civil Application 139 of 2023) [2024] KEHC 625 (KLR) (26 January 2024) (Ruling)

Neutral citation: [2024] KEHC 625 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CIVIL APPLICATION 139 OF 2023
PJO OTIENO, J
JANUARY 26, 2024**

BETWEEN

RAMAGON CONSTRUCTION LIMITED APPLICANT

AND

**THE BOARD OF DIRECTORS SIGALAGALA NATIONAL
POLYTECHNIC FORMERLY SIGALAGALA TECHNICAL TRAINING
INSTITUTE 1ST RESPONDENT**

**THE PERMANENT SECRETARY (MINISTRY OF HIGHER EDUCATION,
SCIENCE AND TECHNOLOGY) 2ND RESPONDENT**

THE HONOURABLE ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. Before the court for determination is the applicant’s notice of motion application dated 27th September, 2023 by which the applicant seeks orders that the final award dated 14th August 2023 and published on 6th September 2023 by the sole arbitrator therein, Eng. Oliver C W Khabure, CE FCI Arb, be recognized, adopted and enforced as a decree of this court and that the respondents be ordered to pay all costs and expenses incidental to the enforcement and execution of the decree aforesaid.
2. The application is supported by the affidavit of Abdi Bare Abdi sworn on 26th September, 2023 in his capacity as the managing director of the applicant company in which he gives a background of the dispute. The deponent states that in the month of September 2020 the 1st respondent through the office of the 2nd respondent advertised a tender for the construction of a tuition block at Sigalagala Technical Training Institute for a contract price of Kshs. 33,179,543.80/-. The applicant participated in the tender process and eventually became the successful bidder. The applicant was again awarded another tender for the rehabilitation of workshops and laboratories at a contract price of Kshs.



- 10,163,862/-. He asserts that despite the applicant performing the tendered work, the respondents breached the contract by failing to pay them an outstanding sum of Kshs. 12, 571,247/- as per the executed works. Following the breach, the applicant moved the court in Kakamega HCCC No. 07 of 2020 and the matter was referred to arbitration leading to the issuance of orders that the respondents were to pay the applicant a sum of Kshs. 12,992,963.60 and interest at a commercial rate of 12% within 30 days of the final award which is dated 6th September, 2023. He is thus seeking the intervention of this court to enforce the arbitral award.
3. From the record there is an affidavit of service sworn on 25th October, 2023 to the effect that the respondents were duly served but there is no response offered in opposition to be the subject application. The court thus proceeds on the basis that the application is an opposed. That however does not lessen the courts duty to consider the matter on the merits.
 4. The applicant has filed written submissions and identifies the issue for determination by this court to be whether the applicant has met the conditions set under the *Arbitration Act* for the enforcement of the arbitral award. On that issue, it is submitted that clause 27 of the standard contract agreement form signed between the parties stipulates that any dispute arising would be referred to arbitration which they referred to resulting in the issuance of a final arbitral award in their favor. They argue that clause 37.8 of the contract agreement and section 32A of the *Arbitration Act* provides that the arbitral award shall be final and binding upon the parties and points out that section 36 of the *Arbitration Act* vests the High Court with the power to recognize and enforce an arbitral award on condition that the court is satisfied that there exists an agreement with the arbitration clause on which an award has been made and a certified original copy of the arbitral award has been availed.
 5. Looking at the unopposed application and the submissions by the applicant, the issue that this court is called upon to determine is whether it ought to enforce the arbiter's award dated 6th September, 2023. The guide for resolving that issue is found in Section 36 of the *Arbitration Act* setting out the legal parameters governing enforcement and adoption of an arbitral awards. See *Samura Engineering Limited v Don-Wood Co Ltd* [2014] eKLR.
 6. The court has perused the file and is satisfied that indeed the applicants have met the preconditions for its enforcement and there being no opposition nor the grounds for refusal to enforce or setting aside the award, pursuant to Section 35 (2) of the *Arbitration Act*, the award dated 6th September, 2023 is hereby adopted as a decree of the court.
 7. The Chamber Summons dated 26.09.2023 is accordingly allowed with costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 26TH DAY OF JANUARY, 2024.

PATRICK J O OTIENO

JUDGE

In the presence of:

No appearance for the parties

Court Assistant: Polycap

