



**CHARTERED INSTITUTE OF ARBITRATORS KENYA BRANCH LIMITED
SUMMARY CASE LAW**

**MISC APPLICATION NO.468 OF 2019
EPCO BUILDERS LIMITED VS SOUTH DEVELOPMENT COMPANY LIMITED**

FACTS

The Applicant filed a Notice of Motion dated 9th October, 2019 seeking *inter alia* to have paragraphs 228, 229, 230 and 233 of the Final Award of Architect Julius Muthui F. Mutunga dated 11th June 2019 set aside by the Court and in the alternative, the court refers the paragraphs of the Final Award for reconsideration with instructions to determine them within the jurisdiction of the Arbitrator.

The Respondent opposed the application on grounds that it does not meet the threshold for setting aside an arbitral award as per Section 35(2) of the Arbitration Act and that it offends the provisions of Section 35(3) of the Arbitration Act as there was no leave sought to file the application out of time.

The Respondent consequently raised a Preliminary Objection to strike out the application for the reason that the Court lacks jurisdiction to hear/ determine/ make orders/ grant reliefs in respect of the Applicant's application pursuant to provisions of Section 35(3) of the Arbitration Act as the application is statute barred. Counsel for the Respondent submitted and cited cases in support that the Court cannot not take any step without jurisdiction.

The Applicant in its pleadings stated that it sought for reasons, clarifications and removal of the ambiguities vide an application dated 8th August, 2019 addressed to the Arbitrator and made in terms of Section 34 of the Arbitration Act.

ISSUES

Whether the Application should be struck out for reasons that the Court lacks jurisdiction to hear and determine the suit pursuant Section 35(3) of the Arbitration Act?

RULE

Section 35(3) of the Arbitration Act
Section 34 of the Arbitration Act

HOLDING

The Court dismissed the Preliminary Objection and stated that question of statute bar shall be determined during proceedings.

RATIONALE

In determining the issue, the Court stated that the import of Section 34 of the Arbitration Act is that it allows any party to seek correction or clarification of an award as long as the clarification is sought within the time stipulated under the section upon notice being given to the other party. The court also observed that the statute bar of filing setting aside application after 3 months is indeed a legal requirement. It however noted that for this particular case, it is important to

determine the statute-bar at the hearing of the application on the application of Sections 34 and 35 of the Arbitration Act to the instant case.

CASE RELEVANCE

- Section 35 of the Arbitration Act 1995 speaks to the finality of Arbitral Awards.
- The decision(s) arrived upon by an Arbitral Tribunal are final and binding. Parties who forward a dispute to an arbitration ought to anticipate the final and binding nature of arbitral awards.
- The public policy ground for setting aside an Arbitral Awards ought to be interpreted narrowly(strictly) according to the current jurisprudence.



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