

MISCELLANEOUS CIVIL CASE NO. 001 OF 2020; CYRUS NYORI NDUNGU
MBUGUA VS CIC GENERAL INSURANCE LIMITED

- Applicant – Cyrus Nyori Ndungu Mbugua
- Respondent – CIC General Insurance Limited
- Judge(s) – Maureen A. Odero
- Date of delivery of the Judgment: 5th February 2021
- Court: High Court of Kenya at Nairobi City (Milimani Commercial Courts Commercial and Tax Division)

SUMMARY OF FACTS

The Applicant herein signed a medical insurance cover with the Respondent. A dispute arose in respect of a claim for payment by the Applicant. The dispute was then referred to arbitration pursuant to the existence of an arbitration clause in the insurance cover. The Arbitrator published the award in favour of the Applicant.

The Applicant then filed an Application to have the award adopted as a judgment of the High Court whereas the Respondent subsequently filed an application seeking to have the said award set aside.

The Respondent submitted that the award was contrary to justice and morality as it allowed for the unjust enrichment of the Applicant which was inimical to the public policy of Kenya. On their part, the Applicant denied that the award unjustly enriched them to the detriment and prejudice of the Respondent.

ISSUES

Whether the award ought to be set aside on the ground that it violates the public policy of Kenya

ANALYSIS/DETERMINATION

The court made reference to Section 35(2) of the Arbitration Act which sets out the conditions under which an arbitral award may be set aside and noted that strict proof must be relied upon to satisfy any of the prescribed grounds for setting aside an award. The basis of strict proof was elucidated in the case of *Christ of All Nations vs Apollo Insurance Co. Limited (2002) EA*.

The court subsequently was of the view that the Respondent did not prove that the arbitration was not contrary to the public policy of Kenya. The fact that the Arbitrator arrived at their own independent and impartial decision did not mean that there was justification to set aside the award given that the court would arrive at a separate decision. In other words, the court held that they ought not to review the merits of an arbitral award and/or sit on appeal over the decision of the Arbitrator.

RULING/HOLDING

Consequently, the court held that the Respondent's application had no merit and was subsequently dismissed in its entirety. The Applicant's Application for the recognition and enforcement of the award and for the award to be taken as a judgment of the court was allowed.

RATIONALE

The Judge adopted a very narrow/strict interpretation of the public policy ground for setting aside an arbitral award prescribed by Section 35(2) of the Arbitration Act in order to respect the integrity of arbitral proceedings.

In order to satisfy the existence of the public policy ground, a party would have to strictly prove that the manner in which the arbitral proceedings were conducted or the manner in which the decision was arrived at was contrary to public policy.

In this matter, the Respondent did not prove so and thus, their Application was dismissed. The bone of contention ended up being in respect of the merits of the award, of which the court ought not to intervene as was held in the case of *Nyutu Agrovet vs Airtel Network Limited and Others (2019) eKLR* and *Cape Holdings Ltd vs Synergy Industrial Credits Ltd. (2016) eKLR*.

CASE RELEVANCE

- Section 35(2) of the Arbitration Act sets out the conditions under which an Arbitral Award may be set aside.
- The case of *Christ of All Nations vs Apollo Insurance Co. Limited* is the landmark precedent regarding the public policy ground for setting aside an arbitral award.
- It is NOT the role of the court to review and/or sit on appeal over the decision of an Arbitrator. This limit is prescribed by Section 35 of the Arbitration Act. The leading precedent is *Nyutu Agrovet vs Airtel Network Limited and Others*.