



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

**HCCOMM/E1210/2020**

**DIOCESAN SYNOD OF MOUNT KENYA EAST VS LOG ASSOCIATES LIMITED AND PETER KIMANI AND 2 OTHERS**

**FACTS**

A lease agreement was entered into between the Applicant and the 1<sup>st</sup> Respondent on 21<sup>st</sup> January, 2009 where the Applicant leased to the Respondent the suit property. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents are directors of the 1<sup>st</sup> Respondent and its guarantors. Upon expiry of the lease on 30<sup>th</sup> June, 2013 and pursuant to Clause 10 of the lease, the 1<sup>st</sup> Respondent executed an offer for lease dated 28<sup>th</sup> April, 2013 under which the 1<sup>st</sup> Respondent was required to make quarterly payments of the agreed monthly rent.

A dispute arose between the parties on breach of the lease. The dispute was referred to arbitration as per clause 11 of the lease and Justice (Rtd) Aaron Ringera was appointed as the Sole Arbitrator. The Applicant filed and served its statement of claim to the 1<sup>st</sup> Respondent. However, the 1<sup>st</sup> Respondent did not file a statement of response to the claim as directed by the Arbitrator in Order for Directions No. 1. The 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents were not served thus did not file any response. Nevertheless, the Arbitrator determined the merits of the Applicant's claim where it sought general damages for breach of contract. The Arbitrator found that the 1<sup>st</sup> Respondent had breached its contractual obligations under the lease and that the Applicant was entitled to damages.

The Applicant filed a notice of motion dated 11<sup>th</sup> November, 2020 seeking recognition and enforcement of this Arbitral Award dated 31<sup>st</sup> March, 2020 under Section 36 of the Arbitration Act. The Respondents on the other hand opposed the application through a Replying Affidavit of Ezekiel Oranga, the 1<sup>st</sup> Respondent's Chief Technical and Operations Officer. The parties canvassed the application by way of written submissions.

The Applicant submitted that it had complied with the conditions for recognition and enforcement of the Award and that the statutory period of 3 months required to set aside the award had lapsed. The Respondent opposed the application by contending that the Arbitral process was flawed and void ab initio. They stated that the lease was between the Applicant and the 1<sup>st</sup> Respondent and not the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents. Moreover, they stated that a company is a separate legal personality from its owners, members and shareholders hence they cannot be held liable for acts of the 1<sup>st</sup> Respondent. They maintained that the arbitration process was between the Applicant and the Arbitrator since the Respondents were not represented in the process. They also stated that the subject of the Arbitration being breach of contract does not fall under the ambit of the issues that can be referred to Arbitration under clause 1 of the lease. Lastly, the Respondents submitted that the arbitration process was null and void for want of jurisdiction because under clause 11 of the lease, the Applicant ought to have engaged in negotiations before proceeding to arbitration.

**ISSUE FOR DETERMINATION**

Whether the court should recognize, adopt and enforce the Arbitral Award?

## **RULE**

The Arbitration Act, Section 36

The Arbitration Act, Section 37

The Arbitration Act, Section 17

## **RULING**

The Court allowed the Applicant's Notice of Motion dated 11<sup>th</sup> November, 2020 on terms that the Arbitral Award by Justice (Rtd) Aaron Ringera be recognized and adopted as a judgment of the Court and leave granted to the Applicant to enforce it as an order of the Court. Lastly, the Respondent was ordered to bear the costs of the application.

## **RATIONALE**

In allowing the application to recognize and enforce the Arbitral Award, the Court stated that it did not find the ground of misjoinder of parties or jurisdiction of the Arbitrator to be valid grounds to refuse the enforcement of the award. Moreover, these issues ought to have been raised before the Arbitrator at the earliest stage and not in the first instance before the Court as the Respondents have done as per Sections 17(2) and (3) of the Arbitration Act.

The Court observed that since the 1<sup>st</sup> Respondent chose not to participate in arbitral proceedings despite being served with the claim and the Arbitrator duly noting that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents had not been served, determined the claim as between the Applicant and the 1<sup>st</sup> Respondent. Hence, the decision specifically addressed the 1<sup>st</sup> Respondent as opposed to all Respondents.

On the contention by the Respondents that the Arbitrator could only address issues relating to interpretation, rights, obligations and or implementation of any or more of the provisions of the lease, the Court disagreed with this guided by the opening line of clause 11 of the Lease, "all questions hereinafter" . The court opined that the phrase gives the parties and the arbitrator a wide jurisdiction to deal with disputes arising from the Lease.

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*Kenya Branch*