

MISC. CASE NO. 215 OF 2016:

GOLDEN HOMES (MANAGEMENT) LIMITED V MOHAMMED FAKRUDDINN ABDULLAI & ANOTHER; GOLDEN HOMES LIMITED (INTERESTED PARTY) [2019] EKLK

FACTS

The parties entered into a lease agreement for provision of housing facilities by the Applicant to the 1st and 2nd Respondents. Ms. Silvia Michelle Kithinji was appointed by the parties as the sole arbitrator to determine the dispute that arose from the agreement. The final arbitral award was made and published on the 21st November 2014 in the following terms:

- a) The Respondents to pay all service charge owed to the Claimant together with interest as at the date of this Award within thirty (30) days hereof;
- b) The monies held in the Joint Account by Advocates of the Respondents and the Claimant to be transferred to the Claimant within seven (7) days from the date hereof;
- c) The Claimant to hold both a directors and a shareholders/ lessees meeting within sixty (60) days hereof in accordance with the provisions of the Companies Act governing proceedings and meetings and record resolutions agreed by members with respect to provisions of service under the Lease particularly security and water; and
- d) The Respondents to bear the costs of the proceedings.
- e) The Applicant filed an ex-parte chamber summons application supported by an Affidavit sworn by its Managing Director seeking orders that the Court adopts the Arbitral Award made by the sole arbitrator as a decree of the court and that costs of the application be provided for.

ISSUE

Whether the Arbitral Award should be adopted as a decree of the Court?

RULE OF LAW

Section 36 (1) of the Arbitration Act

HOLDING

The Court allowed the Application as prayed with costs in cause

RATIONALE

The Applicant's application had complied with the provisions of the law.

CASE RELEVANCE

Section 36 of the Arbitration Act provides for recognition and enforcement of arbitral awards subject to the grounds of refusal as per Section 37. None was present.

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RULING DATE: 4TH MARCH 2019.

FACTS

The Applicant and the Interested Party filed their party to party bill of costs dated 26th April 2016 for taxation by the Deputy Registrar. The Respondents on the other hand raised a preliminary objection upon being served with the bill of costs based on grounds that pursuant to section 32 B (1) of the Arbitration Act, the court lacks the jurisdiction to apportion and determine the costs of the arbitration.

The parties agreed to dispose of the preliminary objection by written submissions. The Applicant argued that the Honorable court has the jurisdiction to apportion and determine the costs of the arbitration in that the arbitral award had already been adopted by the Honorable court rendering the Arbitrator *functus officio* in dealing with the matter. The Respondent submitted that the Arbitrator is the only person with exclusive jurisdiction to determine the quantum of costs and no other body is to determine the same. It relied on the case of Kenfit Limited vs Consolata Fathers [2015] eCLR among other cases to further its case.

ISSUE FOR DETERMINATION

Whether the Respondent's Preliminary Objection is merited?

RULE OF LAW

Section 32 B of the Arbitration Act

HOLDING

The Court upheld the preliminary objection with costs to the Respondent.

RATIONALE

In upholding the Respondent's preliminary Objection, the Court relied on Section 32 B(1) of the Arbitration Act which gives the tribunal the power to determine and assess costs unless otherwise agreed by the parties. The tribunal had pronounced itself on the issue of costs and ordered the Respondent to bear costs of the proceedings. There was no application before the court to review and/or vary this order or set it aside. There was also no agreement by the parties that costs be computed at court rates.

Further, the Court opined that it had no jurisdiction to determine the issue of costs because the right of a party to have recourse to the High Court against an arbitral award is limited as per the provisions of Part VI of the Arbitration Act. The judge associated himself with the findings of the court in the cases of; *Transworld Safaris Limited –v- Eagle Aviation Limited & 3 Others* [2012] eCLR, and *Ann Mumbi Hinga vs Victoria Njoki Gathara Nairobi Civil Appeal No. 8 of 2009*, which

implicated that the High Court has no other power against an arbitral award outside the provisions specifically provided for in the Arbitration Act.

CASE RELEVANCE

The court cannot determine matters which have been expressly vested by the Arbitration Act in the jurisdiction of the Arbitral tribunal.