

**MISCELLANEOUS CAUSE E083 OF 2019  
UNIVERSITY OF NAIROBI V MULTISCOPE CONSULTANCY ENGINEERS LIMITED**

**RULING DATE: 13TH MAY, 2020**

**FACTS**

A dispute arose in respect of professional fees claimed by the respondent from the applicant for consultancy work in the construction of University of Nairobi Towers. The dispute was referred to arbitration and a decision was rendered in an arbitral award dated November 24, 2017. The applicant made an application to set aside the arbitral award and the respondent raised a preliminary objection stating that under section 35(3) of the Arbitration Act, the application was filed out of time. Section 35(3) of the Arbitration Act provided inter alia that an application for setting aside the arbitral award could not be made after 3 months had elapsed from the date on which the party making that application had received the arbitral award. A dispute arose as to when the applicant could be said to have received the award. The respondent argued that the award should be deemed as delivered when the award was published by the tribunal and parties were notified that it was ready for collection. The applicant said that the parties had been notified of the publication of the award and were notified that upon receipt of its fees, the tribunal would deliver the award to the paying party. According to the applicant, the respondent paid fees after a considerable period of time and the applicant learnt of the award on March 12, 2019 after its advocates collected it on March 5, 2019.

**ISSUE FOR DETERMINATION**

How should time be computed under section 35 (3) of the Arbitration Act for purposes of setting aside arbitral awards?

**RULE**

Section 35 of the Arbitration Act  
Section 32 of the Arbitration Act

**ANALYSIS**

Section 35(3) of the Arbitration Act outlines that a notice to the parties that an award is ready for collection is both sufficient delivery and receipt of the award to the parties. Under section 32(5) of the Arbitration Act, a signed copy of an arbitral award was to be delivered to each party. In that context delivery meant the giving or yielding possession or control of a signed copy of the award to each party. It meant releasing to or making available for collection a signed copy of the award to the parties. In the Kenyan Arbitral scene, an arbitral tribunal was not obligated to dispatch a signed copy of the arbitral award to each party. For that reason, delivery happened when the tribunal either gave, yielded possession, released or made available for collection a signed copy of the award to the parties. Actual receipt of the signed copy of the award by the party was not necessary.

## **HOLDING**

The Court upheld the Respondent's Preliminary objection and struck out the applicant's application.

## **RATIONALE**

In determining the issue, the Court was guided by provisions of the Arbitration Act. When the tribunal notified the parties that a signed copy of the award was ready for collection, the date of notification was deemed to be the date of delivery and receipt of the award because it was on that date that the tribunal made the signed copy available for collection by the parties. Once the arbitral tribunal notified the parties that the award was ready for collection upon payment of fees and expenses, then delivery had happened as it is upon the parties to pay the fees and expenses. That was because the only obligation of the arbitral tribunal was to avail a signed copy of the award.

The tribunal having discharged that obligation meant that delivery and receipt of the signed copy of the award was deemed because any delay in actual collection could only be blamed on the parties. The contention that the applicant was late in collecting the award because of difficulties in raising its share or tribunal fees and expenses could have been made in an application for extension of time, for the making of the application to set aside the award. However, there was a school of thought stating that there were no specific provisions for expansion of time under section 35(3) of the Arbitration Act and therefore the timelines were cast in stone and could not be expanded.

## **CASE RELEVANCE**

A notice to the parties that an award is ready for collection is both sufficient delivery and receipt of the award to the parties.

Once the arbitral tribunal notifies the parties that the award is ready for collection upon payment of fees and expenses, then delivery is deemed to have happened as it is upon the parties to pay the fees and expenses.