



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

**MISCELLANEOUS CIVIL CASE NO. 455 OF 2019
RUGSAN LAND DEVELOPMENT LTD -VS- FAITH AGNES MAUMOH**

- Applicant – Rugsan Land Development Ltd.
- Respondent – Faith Agnes Maumoh
- Judge(s) – Hon. S.A. Opande (Deputy Registrar)
- Date of delivery of the Ruling: 21st August 2020
- Court: High Court at Nairobi (Milimani Law Courts); Commercial, Tax & Admiralty Division

SUMMARY OF FACTS

The Applicant filed a party and party bill of costs application that remained unopposed by the Respondent. The Kshs. 2,098,254/= costs being sought by the Applicant were in respect to the arbitration proceedings.

ISSUE

The following issue arose for determination by the Deputy Registrar:

“What determines/governs/regulates the cost and any expense ancillary to the arbitration process?”

HOLDING

The Judge held that Section 32B of the Arbitration Act is the governing law in respect of costs apportioned to arbitral proceedings. According to the Section, such costs and expenses are to be determined and apportioned by the Arbitral Tribunal or the Arbitrator. The Judge went on to tax the costs as per the recommendations of the Arbitral Tribunal.

RATIONALE

According to the Judge, abiding to Section 32B of the Arbitration Act as regards to costs of the arbitral proceedings reserves the integrity of arbitration.

CASE RELEVANCE

Section 32B of the Arbitration Act determines costs in relation to arbitral proceedings, and not the Advocates' Remuneration Order. This means that costs and expenses apportioned ought to be determined by the Arbitral Tribunal pursuant to the discretionary power granted to them by the said Section.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & TAX DIVISION
MISCELLANEOUS CIVIL CASE NO 455 OF 2019

RUGSAN LAND DEVELOPMENT LTDAPPLICANT

VERSUS

FAITH AGNES MAUMOHRESPONDENT

RULING

The Applicant has filed a Party and Party bill of cost dated 6th February 2020 seeking to have cost of the Application herein assessed at Kshs. 2,098,254/-. There has been evidence that the same was served upon the Respondent but it remains unopposed.

I have perused and considered the bill of costs. I have perused and considered the record. From the record, this was an application for enforcement of an Arbitral Award. However, from the way the Bill of cost is drawn, the Applicant seem to be seeking costs in respect of the arbitration proceedings. From my reading and understanding the Section 32B of the Arbitration Act, cost and any expense ancillary to the arbitration process are determined and apportioned by the Arbitral tribunal or the Arbitrator. The Section provides thus:

32B. (1) Unless otherwise agreed by the parties, the costs and expenses of an arbitration, being the legal and other expenses of the parties, the fees and expenses of the arbitral tribunal and any other expenses related to the arbitration, shall be as determined

and apportioned by the arbitral tribunal in its award under this section, or any additional award under section 34(5).”

This opposition has been firmed up by the decision in Miscellaneous Case 215 of 2016 Golden Homes (Management) Limited v Mohammed Fakruddinn Abdullai & another; Golden Homes Limited (Interested Party) [2019] eKLR where this High Court has observed thus:

“18. It is therefore clear that, the Arbitrator determined which party to pay the costs and stated clearly that it was payable by the Respondent. What is clear is that, the Arbitrator did not quantify the amount payable as costs. The question that arises is whether; the court should then step in and deal with the issue of quantum.

19. It is a fundamental feature of arbitration that as a chosen alternative to a national court, the decision of parties is for arbitrators to solve the dispute finally. The parties accept that, not only will arbitration be the form of dispute settlement, but also that they will accept and give effect to the arbitration award. Implied with the agreement to arbitrate, is the acceptance that the strict of the procedure and rights of appeal of the court, are excluded subject to very limited but essential protections. The decision of the Arbitrator is final and binding on the parties. This is both a contractual commitment of the parties and the effect of the applicable law.

20. In that regard, the provisions of Part VI of the Arbitration Act, states that; the parties will only have recourse to the High court against arbitral awards, within the provisions of Section 35 and 37 of the Arbitration Act. Thus the court has no power to intervene in

any matter outside these provisions. (See; Anne Mumbi Hinga vs Victoria Njoki Gathara Nairobi Civil Appeal No. 8 of 2009).

21. To revert back to the question of quantum, I find that, the court has no jurisdiction to descend into the arena of apportionment of costs, by virtue of the fact that the Arbitral tribunal has already determined who is liable to pay.”

The above being the position I find some items of the bill to be untenable in law and shall be taxed off. For instruction fees, I would have said that the amount payable is provided for presenting or opposing an Application for setting aside an arbitral award. But then that seem to apply to applications to set aside awards. However, I am inclined to treat this Application among other suits not provided for where if defended, the instructions fees should be Kshs. 75,000/-. That being the case and considering the importance of the case and interests of the parties, I will exercise my discretion and increase the instruction fees to Kshs. 300,000/-.

Having deposed from assessment of cost of the arbitration proceedings, I will therefore only consider items in respect of the Application for enforcement that was filed herein on 4th October 2019. This means that, save for Item 1 and 2 which I have adjusted to legally acceptable figures, I tax off all other items up to Item 125 where drawing of the Application of enforcement started. Again on disbursements, Items 140, 141 and 143 have been taxed off as they relate to arbitrator's fees which as has been early noted to be within the realms of the arbitrator and not in courts.

i.)	Instruction fees	Kshs.	300,000.00
ii.)	Getting up fees	Kshs.	100,000.00

iii.)	Cumulative cost of all other services inclusive	Kshs. 37,575.00
iv.)	Disbursements	Kshs. <u>22,225.00</u>
Total		Kshs. <u>459,740.00</u>

The bill of cost is hereby taxed at Kshs. 459,740/-. And amount of Kshs. 1,638,514/-.

Delivered via Virtual Link on this 21st day of August 2020.



S.A. OPANDE

DEPUTY REGISTRAR

A notice of delivery ruling having been published on www.kenyalaw.org on 21st August 2020, the Ruling is hereby delivered virtually in the presence of:

.....Mr. Ochieng For the Applicant

.....N/A For the Respondent