

REPUBLIC OF KENYA
IN THE CHIEF MAGISTRATES COURT AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL SUIT NO. 7926

ALFATECH CONTRACTORS.....PLAINTIFF

VERSUS

PRINCIPAL SECRETARY MINISTRY OF EDUCATION
SCIENCE AND TECHNOLOGY SUCCESSOR TO THE MINISTRY OF HIGHER
EDUCATION AND TECHNOLOGY..... DEFENDANT

JUDGMENT

1. The Plaintiff's claim in a plaint dated the 21st November 2016 is for a declaration that the Plaintiff is entitled to ksh. 12, 045,959 and interest of ksh. 336, 115. 70 and ksh. 275,000 being the adjudicator's fees.
2. The claim arises from an agreement between the Plaintiff and the Defendant on the 25th October 2011.
3. The Defendant in their defence denied the Plaintiff's claim.

The Plaintiff's case

4. PW1 Kenneth Mwaura stated that he entered into a contract with the Defendant. The contract provided for the appointment of an arbitrator. The appointing authority was the Chatered institute of arbitrators. The adjudicator informed the respondents of the adjudication proceedings. An award was made in favour of the Plaintiff. The Plaintiff produced document number 16 to support its case. The Defendant attended the adjudication proceedings. The Defendant was granted 28 days to appeal against the arbitration award.

The Defendant's case

5. DW1 Joseph Njenga Njau stated that the contract was signed by both parties. The contract had a dispute resolution mechanism and provided for appointment of an adjudicator. DW1 admitted that they did not submit a defence to the adjudicator.

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The Attorney General was supposed to defend the ministry. DW1 stated that he could not file a defence in his personal capacity.

The Plaintiff's Submissions

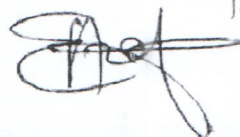
6. Counsel for the Plaintiff submitted that the contract provided for adjudication. The Defendant was made aware of one Paul Ngotho as the adjudicator. The adjudicator notified the Defendant of the appointment.
7. The Defendant opted not to participate in the adjudication.

The Defendant's Submissions

8. Counsel for the Defendant submitted that the Plaintiff signed the final certificate. The Defendant also wrote to the Chartered Institute of Arbitrators to protest the ongoing adjudication proceedings on the 3rd of November 2015. The Defendant submitted that the Plaintiff is not entitled to any of the prayers sought.

Determination

9. I have considered the evidence on record and I am satisfied that there exists an arbitration award. I am guided by section 32A. of the arbitration Act which states "Except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it, and no recourse is available against the award otherwise than in the manner provided for by this Act"
10. This Court cannot interfere with the arbitration award. The Defendant had an opportunity to appeal the arbitration award but failed to do so.
11. The Court makes a declaration that the Plaintiff is entitled to KSH. 12, 045,959 as prayed in the Plaint.



DATED, SIGNED AND PRONOUNCED IN OPEN COURT AT MILIMANI
COMMERCIAL COURTS THIS 22nd DAY OF JANUARY 2019 IN THE PRESENCE OF
THE PARTIES

COURT ASSISTANTStella

E.A NYALOTI



CHIEF MAGISTRATE

& 22/1/19

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