



**Directline Assurance Company & 4 others v Alier & 8  
others (Commercial Miscellaneous Application E250 of 2021)  
[2024] KEHC 13087 (KLR) (Commercial and Tax) (28 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13087 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL MISCELLANEOUS APPLICATION E250 OF 2021**

**MN MWANGI, J**

**OCTOBER 28, 2024**

**IN THE MATTER OF AN APPLICATION UNDER SECTIONS 14(3) & 15 OF THE  
ARBITRATION ACT CHALLENGE TO ARBITRATOR AND THE ARBITRATION**

**BETWEEN**

**DIRECTLINE ASSURANCE COMPANY ..... 1<sup>ST</sup> APPLICANT  
ROYAL MEDIA SERVICES LTD ..... 2<sup>ND</sup> APPLICANT  
ROYAL CREDIT LIMITED ..... 3<sup>RD</sup> APPLICANT  
SAMUEL KAMAU MACHARIA ..... 4<sup>TH</sup> APPLICANT  
PURITY GATHONI MACHARIA ..... 5<sup>TH</sup> APPLICANT**

**AND**

**MR PHILIP ALIKER ..... 1<sup>ST</sup> RESPONDENT  
SUREINVEST COMPANY LIMITED ..... 2<sup>ND</sup> RESPONDENT  
STENNY INVESTMENTS LIMITED ..... 3<sup>RD</sup> RESPONDENT  
TRIAD NETWORKS LIMITED ..... 4<sup>TH</sup> RESPONDENT  
AKM INVESTMENTS LIMITED ..... 5<sup>TH</sup> RESPONDENT  
KEVIN DERMOT MCCOURT ..... 6<sup>TH</sup> RESPONDENT  
JANUS LIMITED ..... 7<sup>TH</sup> RESPONDENT  
GEOFFREY GORDON WERE RADIER ..... 8<sup>TH</sup> RESPONDENT  
JAMES KABERERE GACHOKA ..... 9<sup>TH</sup> RESPONDENT**



## RULING

1. Dr. Kamau Kuria (SC), learned Counsel for the applicants, made an oral application seeking leave to appeal from the decision made by this Court on 25<sup>th</sup> October, 2024. He submitted that he was seeking leave to appeal on the ground that there is a right of appeal under the High Court's supervisory role as per decisions rendered in the United Kingdom, India and Canada. He stated that a Supervisory Court has the rights to supervise all aspects of Arbitral proceedings, and that the Court of Appeal and the Supreme Court of Kenya may be of different view, in regard the High Court's supervisory jurisdiction.
2. He stated that any error made by the Regulatory Authority, being the Insurance Regulatory Authority in this case, should not be taken against the applicants. He submitted that Section 166 of the [Insurance Act](#) confers on the Commissioner of Insurance the power to consent or not, in writing, to a change of shareholding. He stated that as for the 1<sup>st</sup> applicant herein, it is only the said Commissioner who has the records of shareholding and who can give a consent where the change in shareholding is more than 10%. The applicants' Counsel was of the view that the Court of Appeal may be of a different view to that made by this Court in its ruling of 25<sup>th</sup> October, 2024, thus the application for leave to appeal.
3. The application was opposed by Mr. Njiru, learned Counsel for the 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 9<sup>th</sup> respondents, who submitted that the application for leave to appeal should be made before the Court of Appeal in order for the said Court to determine if the circumstances under which an appeal is being sought fall under the exceptions in the case of *Nyutu Agrovet Limited v Airtel Networks Ltd. & another* [2019] eKLR, a decision of the Supreme Court.
4. Ms. Ndumia, learned Counsel for the 3<sup>rd</sup> respondent, opposed the application on the ground that the applicants' Counsel was seeking an order under the exception to the rule in Sections 35 and 36 of the [Arbitration Act](#), yet the High Court has limited jurisdiction under the said provisions. She expressed the view that an application seeking leave to appeal should be made to the Court of Appeal.
5. She stated that it has been two (2) years since the Arbitral Award was made. She pointed out that an application for enforcement of the said Award was filed in HCOMM No. E509 of 2022. She urged this Court to proceed with the matters pending before it.
6. Both Messers Havi and Wasonga opted not to make any representations in response to the oral application made by the applicants.
7. In a rejoinder, Dr. Kamau Kuria (SC) submitted that in the Supreme Court case of *Nyutu Agrovet Limited v Airtel Networks Ltd & another* (supra), it was held that there is a limited right of appeal. He stated that Rule 41 of Court of Appeal Rules provides for leave of the Court to be sought first in the Court that made the decision. He submitted that this Court has the jurisdiction to grant the leave being sought by the applicants.

### Analysis And Determination.

8. I have gone through the Supreme Court decision in *Nyutu Agrovet Limited v Airtel Networks Ltd; Chartered Institute of Arbitrators – Kenya Branch (Interested party)* (supra). One of the issues that was before the Supreme Court was on the right by Nyutu Agrovet Limited to appeal against the decision that had been made by Hon. Judge Kimondo when he set aside an Arbitral Award under Section 35 of the [Arbitration Act](#). Judge Kimondo had granted leave to Nyutu Agrovet Limited to appeal from his decision.



9. Subsequently, Nyutu Agrovet Limited filed an appeal to the Court of Appeal. The said Court held that Nyutu Agrovet Limited did not have a right of Appeal under the provisions of Section 35 of the *Arbitration Act*. It struck out the appeal.
10. Undeterred, Nyutu Agrovet Limited filed Petition No. 12 of 2016 in the Supreme Court, where the said Court addressed the limits of judicial intervention in arbitration in light of the provisions of Section 35 of the *Arbitration Act*. The Supreme Court found that an appeal lies where it is shown that in setting aside an Arbitral Award, the High Court went beyond the grounds set out in the said provisions. The Supreme Court also held that the only instance that an appeal may lie from the High Court to the Court of Appeal on a determination made under Section 35 of the *Arbitration Act* is where the High Court in setting aside an Arbitral Award, has stepped outside the grounds set out in the said Section, thereby making a decision so grave, so manifestly wrong, and which has completely closed the door of justice of either of the parties. The Supreme Court further held that the said circumscribed and narrow jurisdiction should also be so sparingly exercised, and that only in the clearest of cases should the Court of Appeal assume jurisdiction.
11. In this instance, no determination has been made either under Section 35 or 36 of the *Arbitration Act*. The application dated April 11, 2024, whose ruling the applicants are seeking leave to appeal from, sought leave for the applicants herein to file a further affidavit for admission into evidence, a letter dated 5<sup>th</sup> March, 2024 from the Insurance Regulatory Authority that addresses the shareholding of the 1<sup>st</sup> applicant. The said application was filed after the Final Arbitral Award was published on 27<sup>th</sup> September, 2024.
12. The application dated 11<sup>th</sup> April, 2024 was made under this Court's supervisory jurisdiction as there is an Amended Amended Originating Notice of Motion arising from the Arbitral proceedings that is pending hearing and determination.
13. In my understanding of the Supreme Court decision in *Nyutu Agrovet Limited v Airtel Networks Ltd; Chartered Institute of Arbitrators – Kenya Branch (Interested party)* (supra), the window to appeal from decisions made by the High Court arising from Arbitral proceedings is very narrow, as parties to such proceedings are meant to be heard expeditiously and the rights of the parties determined without undue delay. To that end, the Supreme Court in the *Nyutu Agrovet Limited's* case (supra, further held as follows-

In stating the above, we reiterate that Courts must draw a line between legitimate claims which fall within the ambit of exceptional circumstances necessitating an appeal and claims where litigants only want a shot at an opportunity which is not deserved and which completely negates the whole essence of arbitration as an expeditious and efficient way of delivering justice.

14. I note that the Originating Notice of Motion dated 9<sup>th</sup> April 2021, which has been amended twice, has not been heard more than three (3) years down the line. An application seeking enforcement of the Final Arbitral Award filed in HCOMM No. E509 of 2022 is also yet to be heard, but under the provisions of Sections 14(8) and 17(8) of the *Arbitration Act*, the Originating Notice of Motion as amended twice, takes precedence when it comes to hearing.
15. Given the said circumstances, the order that commends itself to me is not to grant leave to the applicants to appeal from the decision made by this Court on October 25, 2024, as the matter sought to be appealed from does not arise from a decision made under the provisions of Sections 35 or 36 of the *Arbitration Act*, so as to fall under the exceptions set out in the Supreme Court decision in *Nyutu*



Agrovet Limited v Airtel Networks Ltd; Chartered Institute of Arbitrators – Kenya Branch (Interested party) (supra).

16. Further Section 39(3)(b) of the *Arbitration Act* provides thus –

Notwithstanding Sections 10 and 35 an appeal shall lie to the Court of Appeal against a decision of the High Court under Subsection (2)

a. ....

b. The Court of Appeal being of the opinion that a point of law of general importance is involved the determination of which will substantially affect the rights of one or more of the parties, grants leave to appeal, and on such appeal the Court of Appeal may exercise any of the powers which the High Court could have exercised under Subsection (2).

17. From the above provisions, it is evident that the applicants can seek leave to appeal in the Court of appeal, from the ruling that I rendered on October 25, 2024. The oral application seeking leave to appeal is dismissed with no order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28<sup>TH</sup> DAY OF OCTOBER, 2024.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:

Dr. Kamau Kuria (SC) for the 1<sup>st</sup> to 6<sup>th</sup> applicants

Ms Ndumia for the 3<sup>rd</sup> respondent

Mr. Njiru h/b for Mr. Kiragu Kimani (SC) for the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 9<sup>th</sup> respondents

Mr. Mugo h/b for Mrs Wambugu for the 6<sup>th</sup> respondent

Mr. Wasonga for the 1<sup>st</sup> respondent

No appearance for the intended interested party

Ms B.Wokabi – Court Assistant.

