



Jojes Oil Dealers Limited v Nairobi City County Assembly (Commercial Miscellaneous Application E570 of 2022) [2022] KEHC 13269 (KLR) (Commercial and Tax) (30 September 2022) (Ruling)

Neutral citation: [2022] KEHC 13269 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL MISCELLANEOUS APPLICATION E570 OF 2022**

**DAS MAJANJA, J
SEPTEMBER 30, 2022**

BETWEEN

JOJES OIL DEALERS LIMITED APPLICANT

AND

NAIROBI CITY COUNTY ASSEMBLY RESPONDENT

RULING

1. It is common ground that the parties entered into a contract dated July 18, 2022 for supply and delivery of fuel for a period of 3 years. By a letter dated July 18, 2022, the respondent wrote to the applicant informing it that it had terminated the contract because of failure of the applicant to fulfil its obligations. It is this termination that precipitated the filing of the application dated August 1, 2022 made under section 7(1) of the *Arbitration Act* seeking an injunction restraining the respondent from terminating the contract pending the arbitration and an order compelling the respondent to revoke the letter dated July 18, 2022.
2. The application is supported by the affidavit of applicant's general manager, Kaltuma A Abdulla, sworn on August 1, 2022. It is opposed by the respondent through grounds of opposition dated September 8, 2022. I have heard brief oral submissions by the respective counsel and came to the conclusion that the application must be dismissed for the following reasons.
3. While it is not necessary under section 7(1) of the *Arbitration Act* for the arbitration proceedings to have commenced in order to grant interim measures of protection, there is no evidence in the deposition that the applicant has taken any steps to invoke the arbitration process. In the circumstances and as threshold issue, apart from stating that there is an arbitration clause in the contract, it has not been invoked and this court would be reluctant, in the circumstances, to grant an open ended interim measure of protection without an expectation that the applicant will invoke and commence arbitral proceedings.



4. The second reason is that the contract has already been terminated. To grant interim orders of the nature sought would amount to granting a mandatory injunction which requires a high degree of certainty that the matter will succeed. Bearing in mind that the dispute ought to be settled by arbitration, the court will be required to engage in factual matters in order to satisfy itself that the mandatory order is warranted thus straying into the jurisdiction of the arbitral tribunal. It is also for this reason that the court cannot order the respondent to revoke the termination. Lastly, this is a proper case where damages are an adequate remedy for the party aggrieved and which the arbitral tribunal has the power to award.
5. I dismiss the applicant's notice of motion dated August 1, 2022 with costs to the defendant assessed at Kshs 40,000.00.

DATED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER 2022.

DS MAJANJA

JUDGE

Ms Were instructed by Ikua and Partners Advocates for the Applicant.

Mr Kokebe instructed by Diro Advocates LLP for the Respondent.

