



**Deen v Mati; Langat (Interested Party) (Miscellaneous Case E138 of 2022)
[2022] KEHC 16021 (KLR) (Commercial and Tax) (25 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 16021 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CASE E138 OF 2022
A MABEYA, J
NOVEMBER 25, 2022**

BETWEEN

AZIM DEEN APPELLANT

AND

FLORINE KARIMI MATI RESPONDENT

AND

EVANS LANGAT INTERESTED PARTY

RULING

1. Before Court is a Chamber Summons application dated 21/2/2022. It was brought under Rule 11 of the [Arbitration Rules](#), section 17 of the [Arbitration Act](#) ('the Act'), and Order 51 Rule 1 of the [Civil Procedure Rules](#).
2. The application appealed against the ruling delivered by the arbitrator on 26/1/2022 on the applicant's application dated 10/1/2022, and sought orders that that ruling be set aside and the application be allowed as prayed for before the tribunal. The application also sought orders staying the arbitral proceedings.
3. The grounds for the application were set out on the face of it and on the supporting affidavit of Azim Deen sworn on 21/2/2022. It was averred that *vide* an application dated 10/1/2022, the applicant sought orders to dismiss the arbitration in limine on grounds that according to clause 9.6 of the Deed of Variation dated 28/5/2013, jurisdiction was exclusive to courts, that the claim was statute barred and that there was no arbitrable dispute.



4. That the arbitrator delivered his ruling on 26/1/2022 dismissing the application and the applicant was aggrieved thereby and thus filed the instant appeal. That unless the proceedings were stayed, the application herein would be rendered nugatory.
5. The respondent opposed the application *vide* the replying affidavit of Florine Karimi Mati sworn on 4/3/2022. It was averred that the respondent brought a claim before the mutually agreed upon arbitrator seeking refund of purchase price of Kshs. 32 million and interest from 2013 till payment in full.
6. That previously, the respondent had made an official complaint before the DCI for fraudulent obtaining and the police began investigations. That the applicant filed Misc. Application E508 of 2019 seeking injunctive orders to stop the investigations. The Court ruled that the arbitration process had not been commenced and that injunction orders could not issue to stop a legal body from conducting investigations.
7. That the applicant then raised the preliminary objection dated 10/1/2022 but the same was dismissed. That the instant application was meant to delay finality of the matter.
8. The application was disposed by way of submissions. The applicant's submissions were dated 5/5/2022 while those of the respondent were dated 23/5/2022. The Court has considered the same.
9. Section 17 (1) of the Act provides: -

“The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose”
10. Section 17(6) provides that where an arbitral tribunal rules as a preliminary question that it has jurisdiction, any party aggrieved by such ruling may apply to the High Court within 30 days after having received notice of that ruling, to decide the matter.
11. The applicant is aggrieved by the decision made by the sole Arbitrator regarding his jurisdiction to hear and determine the dispute.
12. In *Safaricom Limited v Oceanview Beach Hotel Limited & 2 Others* [2010] Eklr, Gikonyo J held: -

“The section gives an arbitral tribunal the power to rule on its own jurisdiction and also to deal with the subject matter of the arbitration. It is not the function of a national Court to rule on the jurisdiction of an arbitral tribunal except by way of an appeal under Section 17(6) of the *Arbitration Act* as the Commercial Court in this matter purported to do.”
13. The Court finds that the tribunal was clothed with the requisite jurisdiction to rule on the matter. Though the applicant submitted that the jurisdiction to determine the dispute was exclusive to court as per clause 9.6 of the Deed of Variation dated 28/5/2013, the Court finds that there was a clear arbitral clause at Clause 22 of the Sale Agreement dated 16/1/2013.
14. Clause 9.6 of the Deed of Variation only provided that the agreement was subject to the Kenyan jurisdiction and as correctly found by the tribunal, the *Arbitration Act* is well within the Kenyan jurisdiction.
15. As regards the ground that the respondent's claim was time barred, the arbitrator found that the issue was highly contentious and could not be preliminarily be determined upon. He therefore directed that the same be determined following a full hearing. The applicant has no option but to wait for the final award of the tribunal on the issue.



16. This court has seen clause 22 of the Sale Agreement dated 16/1/2013. There is no agreement on a right of appeal and clause 22(d) provides that the award of the tribunal shall be final and binding upon the parties. Consequently, this Court cannot intervene in any matters arising from the arbitral process, but for as provided under section 17(6) of the Act.
17. Accordingly, the Court finds that the application lacks merit and the same is dismissed with costs.
It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 25TH DAY OF NOVEMBER, 2022.

A. MABEYA, FCIArb

JUDGE

