

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1639 OF 1999

ISABELLE DANGE.....1ST PLAINTIFF
ASHRAF ARBI.....2ND PLAINTIFF
Versus
KENYA WILDLIFE TRAILS LTD.....DEFENDANT

RULING

Section 6(1) of the Arbitration Act of 1995 (hereinafter called ‘the Act’) stipulates that:

6(1) A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or files any pleadings or takes any other step in the proceedings, stay the proceedings and refer the parties to arbitration unless it finds-

(a) that the arbitration agreement is null and void, inoperative or incapable of being performed; or

(b) that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.

The applicant who is the defendant in this suit pleads the above section, and urges this court to stay all the proceedings in this suit and to order that the matters in dispute between the parties hereto be referred to arbitration.

It bases its application on the grounds that a contract exists between it and the respondents which clearly stipulates that any dispute between them shall be referred to arbitration, and which reference “shall be prerequisite to any court action”. This, I find is catered for in clause 13 of an agreement entered into between the parties on 4th August 1998, and which agreement is the one that is relevant to these proceedings. That agreement whose commencement date was 1st August 1998, would continue “for a period of one year renewable”. It stipulated in clause 15 thereof that:

“This agreement can be renewed for a further period to be determined at the time of renewal. The notice for renewal shall be one month from expiry of the agreement”

On 24th July 1999, the respondents informed the applicants that they did not wish to renew the agreement, acting in accordance with Clause 15 thereof. They thereafter instituted this suit and sought orders for inter alia, the restitution of four motor vehicles, which were the subject matter of the 1998 agreement, and of this suit. The issue that arises is whether, the fact that the agreement was not renewed would in itself mean that any dispute arising between the parties can no longer be referred to arbitration, as per clause 13 thereof.

In my opinion, the dispute between these parties and which this suit arises from, arose out of that agreement during its term. It would therefore be improper for me to find that such a dispute cannot be referred to arbitration merely because that agreement was terminated prior to filing this suit.

Secondly I have noted that on the day, when this application was filed, the applicants also filed their grounds of opposition to an application filed by these respondents. The respondents’ counsels now urges this court to dismiss this application on the other ground that having filed the said ground of opposition, the applicants had acted contrary to Section 6 of the Act. Though the said grounds were filed, I would however not hold that against the applicants, especially in view of the fact that the applicants acted within time, and both were filed on the same day. Had they filed this application several days after filing their

grounds of opposition, and taken positive action to prosecute it, perhaps I would have been inclined to agree with the submissions of the respondents' counsel, but in this instance I would not. I do find that they have not contravened section 6 (1) of the Act, and they can not therefore be barred from making this application in the manner that they did.

In view of the above I do grant the applicant an order in terms with prayer no 4 of it's application. Each party shall bear its own costs of this application.

Dated and delivered this 7th day of June 2001

JEANNE W. GACHECHE

COMMISSIONER OF ASSIZE

**Delivered in the presence of:
Mr. Ndirangu holding brief for Mr. Njogu for the applicant
Mr. Oluoch Olunya for the respondents**