



Mahir Properties Limited v Raas Global Limited & 3 others (Environment and Land Case E434 of 2024) [2025] KEELC 5138 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5138 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E434 OF 2024**

**CG MBOGO, J
JULY 10, 2025**

BETWEEN

MAHIR PROPERTIES LIMITED PLAINTIFF

AND

RAAS GLOBAL LIMITED 1ST DEFENDANT

ABDIKAFI NOOR SHEIKH 2ND DEFENDANT

ABDI ALI 3RD DEFENDANT

DAHIR OSMAN 4TH DEFENDANT

RULING

1. Before this court for determination is the notice of motion dated 20th March, 2025 filed by the 1st defendant/applicant and it is expressed to be brought under Sections 4, 6 & 10 of the [Arbitration Act](#) seeking the following orders: -
 - a. That the honourable court be pleased to stay any further proceedings in this case, and refer the parties to arbitration pursuant to Clause 5.4 of the Joint Venture Agreement dated 2nd June 2023.
 - b. That the costs of this application be provided for.
2. The application is premised on the grounds inter alia that the suit is wholly premised on the joint venture agreement dated 2nd June 2023, and that no prejudice will be suffered by any party if the matter is referred to arbitration.
3. The application is supported by the affidavit of the 2nd defendant/applicant sworn on even date. The 2nd defendant/applicant deposed that clause 5.4 of the joint venture agreement contains a valid and binding agreement for mandatory arbitration of all disputes arising therefrom which is to be resolved



under the provisions of Islamic Sharia Law before a single member arbitral tribunal appointed by mutual agreement of the parties.

4. The 2nd defendant/ applicant deposed that the application is brought promptly and without any delay. Further, that the arbitration clause is entirely operative, and fully capable of being performed. He deposed that the interest of justice requires this court to down its tools and refer the matter to arbitration as prayed.
5. The application was opposed by the replying affidavit of Dahir Abduselan Hassen, one of the directors of the plaintiff/respondent sworn on 7th April, 2025. The plaintiff/respondent deposed that the application is an attempt to remedy the 1st defendant/applicant's indolence, since they failed to honour their obligations and instead frustrated the project for the development and construction of residential apartments. He deposed that when the dispute arose, the 1st defendant/applicant issued a termination notice, and that in the interest of justice, they engaged in negotiations pursuant to clause 5.2. However, the 1st defendant/applicant failed to honour their obligations as per the outcome of the negotiation efforts, which necessitated mediation where the parties entered into a mediation agreement that has not been honoured to date by the 1st defendant/applicant.
6. The plaintiff/respondent deposed that this application is an afterthought, and should not be granted as it is in disregard of the overriding objectives in respect to the expeditious disposal of the dispute. Further, that the application has not been brought promptly as required under Section 6 of the *Arbitration Act*. Further, that it is now over five months that the defendant/applicant wants the matter referred to arbitration when all the parties have submitted themselves to court proceedings. It was deposed that pursuant to Article 159 of *the Constitution*, arbitration is an alternative means of dispute resolution, and it is not intended to limit the role of this court as a source of legal remedies. The plaintiff/respondent deposed that if it is in the wisdom of this court allow the prayer in terms of prayer 1, they prayed that the same be granted under very strict timelines of not more than 21 days since Islamic Ad-hoc Arbitration is swift and faster compared to conventional arbitration to avoid further delay. The plaintiff/respondent deposed that it is apprehensive of the 1st defendant/applicant's intention in defeating justice from the previous negotiation and mediation proceedings.
7. This court directed that the application be canvassed by way of written submissions. None of the parties filed their written submissions. Be that as it may, I have considered the application and the response. I am of the view that the issue for determination is whether this matter ought to be referred to arbitration as per the joint venture agreement.
8. Section 6 of the *Arbitration Act* reads as follows:-
 - “(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 otherwise acknowledges the claim against which the stay of proceedings is sought, 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.
 - (2) Proceedings before the court shall not be continued after an application under subsection (1) has been made and the matter remains undetermined.



- (3) If the court declines to stay legal proceedings, any provision of the arbitration agreement to the effect that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.”
9. In determining whether this matter ought to be referred to arbitration, it is necessary for the court to satisfy itself that a deserving party has met the requirements provided under Section 6. In this case, the plaintiff/respondent filed a plaint and a notice of motion both dated 22nd October, 2024. The 1st defendants/applicants filed the notice of appointment of advocates dated 6th November, 2024, replying affidavit and grounds of opposition both dated 14th November, 2024. While the 1st defendant/applicant is yet to enter appearance and file a defence, the alternative options to be assumed in seeking to stay these proceedings and refer the matter to arbitration were not sought in due time which makes the application an afterthought.
10. In the case of *Lofty v Bedouin Enterprises Ltd – EALR (2005) 2 EA*; the Court of Appeal stated as follows:-
- “We respectfully agree with these views, so that even if the conditions set out in paragraphs (a) and (b) of Section 6 (1) are satisfied the court would still be entitled to reject an application for stay of proceedings and referral thereof to arbitration, if the application to do so is not made at the time of entering an appearance or if no appearance is entered, at the time of filing any pleadings or at the time of taking any step in the proceedings.”
11. Further, in the case of *Niazsons (K) Ltd v China Road Bridge [2001] eKLR* the Court of Appeal held:-
- “All that an applicant for a stay of proceedings under Section 6 (1) of the *Arbitration Act* of 1995 is obliged to do is to bring his application promptly. The court will then be obligated to consider the threshold things:
- (a) Whether the applicant has taken any step in the proceedings other than the steps allowed by the section;
 - (b) Whether there are any legal impediments on the validity, operation or performance of the arbitration agreement; and
 - (c) Whether the suit intended concerned a matter agreed to be referred to arbitration.”(emphasis mine).
12. As stated earlier that the 1st defendant/applicant is yet to enter appearance and file its statement of defence, that does not mean that the court would assume that the matter can be referred to arbitration. Four months after filing its response to the application, the 1st defendant/applicant realizes that there is an avenue for arbitration. In my view, this application ought to have been filed at the earliest, and promptly. That was not done. In view of that, it is my finding that failure to make a prompt application seeking these orders meant that the parties assumed the jurisdiction of this court to hear and determine the dispute between the parties.
13. From the above, the Notice of motion dated March 20, 2025 lacks merit, and is hereby dismissed with costs to the plaintiff/respondent.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 10TH DAY OF JULY, 2025.



HON. MBOGO C.G.

JUDGE

10/07/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Evans Ochieng for the Defendant/Applicant

Ms. Maria Nyang'ayo for the Plaintiffs/Respondents

