



REPUBLIC OF KENYA



KENYA LAW
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Pemu Engineering & Equipment Limited v Baron Capital Limited (Environment & Land Case E032 of 2025) [2025] KEELC 4003 (KLR) (22 May 2025) (Ruling)

Neutral citation: [2025] KEELC 4003 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E032 OF 2025**

**MD MWANGI, J
MAY 22, 2025**

BETWEEN

PEMU ENGINEERING & EQUIPMENT LIMITED PLAINTIFF

AND

BARON CAPITAL LIMITED DEFENDANT

(In respect of the preliminary objection by the Defendant dated 29th March 2025 challenging the jurisdiction of this court on the basis of the existence of an arbitration clause in the agreement between the parties)

RULING

Background

1. This ruling is in respect to the preliminary objection by the Defendant dated 29th March 2025 premised on three grounds, namely:-
 - a. That the Honourable Court lacks jurisdiction to entertain the suit herein.
 - b. That the dispute between the parties herein is subject to arbitration pursuant to clause 10 of the loan agreement dated 15th August 2024 and clause 5 of the loan application dated 15th August 2024.
 - c. That the suit is misconceived, gravely incompetent and an abuse of the court's process and ought to be struck out with costs.
2. Interestingly, the Plaintiff responded to the preliminary objection by the Defendant by way of grounds of opposition and supplementary grounds both dated 2nd April 2025. The Plaintiff asserts that;
 - a. The substantive dispute in this suit is the matter in which ownership of the land parcel known as KJD/Kaputiei-North/36526 was transferred from the Plaintiff to the Defendant.



Ownership of land is an issue within the exclusive jurisdiction of the Environment and Land Court, to hear and determine.

- b. There are two sets of agreements on the same subject matter between the Plaintiff and the Defendant all dated 15th August 2024. The Plaintiff's set of agreement does not contain an arbitration clause.
3. In the supplementary grounds of opposition, the Plaintiff further stated that the set of agreement presented by the Defendant is invalid for the reason that it does not disclose the person or the capacity in which that person executed the agreement on behalf of the Defendant company.

Court's directions

4. The directions by the court here that the preliminary objection be canvassed by way of written submissions within the stipulated timelines. The Defendant complied filing its submissions dated 8th April 2025 on the same date. The Plaintiff had not filed any submissions by the time of writing this ruling.

Issues for determination

5. Having considered the preliminary objection by the Defendant and the grounds of opposition filed by the Plaintiff as well as the submissions by the Defendants, the key issue for determination is whether the preliminary objection by the Defendant meets the threshold laid down in the Mukisa Biscuit Case (Mukisa Biscuit Manufacturing Company Limited –vs- West End Distributors Limited (1969) EA 696).

Analysis and Determination

6. In the Mukisa Biscuit case, the court was emphatic that a preliminary objection consists of a pure point which has either been pleaded, or which arises by clear implication out of the pleadings and which if argued as a preliminary point may dispose of the suit. The court gave examples of objections that are suited as preliminary objections to include an objection on the jurisdiction of the court, or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration (as per Law J.A.).
7. Ojwang J (as he then was), in the case of Oraro –vs- Mbaja (2005) KLR 141, elaborated further and stated that;

“ A preliminary objection correctly understood is now well defined as and declared to be a point of law which must not be blurred by factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a preliminary objection yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not, as a matter of legal principle a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point. Anything that purports to be a preliminary objection must not deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”
8. The Defendant in this case has not for good reason filed a statement of defence. If he did so, he would automatically lose his right to raise the kind of objection he has raised under the provisions of the [Arbitration Act](#). His objection therefore cannot be said to have been pleaded nor has it arisen out of



the pleadings; though it is one of the examples given in the Mukisa Biscuit case as appropriate to be raised as a preliminary objection.

9. Further, the grounds of objection raised by the Plaintiff against the preliminary objection, especially on the existence of two sets of agreements between the parties blurs the preliminary objection. It makes it necessary for the court, first, to establish the authenticity of the agreement referred to by the Defendant in the preliminary objection before delving into its merits.
10. The agreements need to be placed before the court to allow it make such a determination. The only way is for the Defendant to place the agreement before the court by filing an application supported by an affidavit attaching the agreement as an annexure.
11. Indeed what the statute (*Arbitration Act*) contemplates, is an application rather than a preliminary objection. That was the gist of the court's holding in the case of Adrec Limited –vs- Nation Media Group Limited (2017) eKLR, where the court stated that,

“ Any party who wishes to take advantage of the arbitration clause in a contract should either at the time of entering appearance or before entry of appearance make the application for reference to arbitration.”
12. The preliminary objection by the Defendant clearly does not meet the threshold in the Mukisa Biscuit case.
13. Having found that the preliminary objection fails on the threshold test, the court will refrain from any further discourse on the issue in order not to pre-empt or prejudice the position of the parties should the Defendant opt to file an application seeking to refer the dispute between it and the Plaintiff to arbitration.
14. The preliminary objection by the Defendant is therefore struck out with costs to the Plaintiff.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 22ND DAY OF MAY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kirimi for the Plaintiff

N/A by the Defendant

Court Assistant: Mpoye

