



**Allweather Investments Co. Ltd & 7 others v Attorney
General & 2 others (Miscellaneous Application E055 of 2025)
[2025] KEHC 1018 (KLR) (Commercial and Tax) (3 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 1018 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E055 OF 2025
JWW MONG'ARE, J
MARCH 3, 2025**

BETWEEN

**ALLWEATHER INVESTMENTS CO. LTD 1ST APPLICANT
COLUMBIA DEVELOPERS LIMITED 2ND APPLICANT
SAMAHA COMPANY LIMITED 3RD APPLICANT**

AND

GLENN STEAM ENGINEERING WORKS LIMITED APPELLANT

AND

**LANTANA AFRICA LIMITED 1ST APPLICANT
GLOBETREK SYSTEMS K) LIMITED 2ND APPLICANT
KINDE ENGINEERING WORKS LIMITED 3RD APPLICANT
PINNIE AGENY LIMITED 4TH APPLICANT**

AND

**THE ATTORNEY GENERAL OF THE REPUBLIC OF
KENYA 1ST RESPONDENT**

**THE CABINET SECRETARY, MINISTRY FOR EDUCATION 2ND
RESPONDENT**

**THE PRINCIPAL SECRETARY, STATE DEPARTMENT OF EARLY LEARNING
AND BASIC EDUCATION 3RD RESPONDENT**



RULING

1. By a Chamber Summons application filed under a Certificate of Urgency by the Applicants dated 20th January 2025 filed under Section 7 of the Arbitration Act 1995 and Rule 2 of the Arbitration Rules, Order 40 Rules 1, 2, & 3 and order 51 Rule 1 of the Civil Procedure Rules and Sections 3, 3A, 63e of the Civil procedure Act seeking the following orders:-
 1. Spent
 2. Spent
 3. That upon hearing and determination of this application, an order does issue restraining the 2nd and 3rd Respondents from taking any further adverse action in respect to the contract, to wit, an action of cancelling or terminating the contracts or entering into contracts with third parties in respect of the subject contract pending the subject contract pending the arbitration process.
 4. That pending the Arbitration process an order of injunction do issue restraining the 2nd and 3rd Respondent whether by its servant's agents or officers or anyone acting on its behalf from seizing or taking over construction sites, equipment, plant, machinery, materials or alienating, dealing with and /or in any manner whatsoever interfering with the applicant's possession of construction sites and construction materials.
 5. That pending the arbitration process an order do issue restraining the 2nd and 3rd Respondent whether by its servants, agents or officers or anyone acting on its behalf from seizing, attaching and /or interfering with the 10% retention sum held by the Respondents.
 6. That the costs of this application be payable by the Respondents.
2. The Application is premised on the grounds set out on its face and the supporting affidavit of Issack Mohammed Abdirahman sworn on 20th January 2025. It is the Applicant's case that pursuant to a tender for construction of classrooms, laboratories and sanitation facilities in under the Secondary Education Quality Improvement Project (SEQIP), a world bank funded project, managed by the 2nd and 3rd Respondents, the Applicant applied and was awarded contracts in targeted primary and secondary schools.
3. That thereafter the process off implementation has been interfered with by the 2nd and 3rd Respondents' officers occasioning the Applicant's heavy losses through fluctuation of cost of materials and expired bid bonds. The Applicant's argue that all the various contracts contain in them arbitration clauses as they are standard in nature and form requiring any disputes arising therefrom to be settled through arbitration in accordance with the Laws of Kenya.
4. They argue that the projects are at various stages of completion but the 2nd and 3rd Respondents have failed to address issues raised by the Applicants and have instead threatened to terminate the contracts and realize the performance security deposited by the Applicants and evict them from the sites without attending to the issues in dispute raised thereto.
5. The Applicants are apprehensive of the 2nd and 3rd Respondents conduct which may lead to the interference with the sites and their plant and machinery in the respective sites and thus jeopardize their claims and have moved to this court seeking an interim measure protection pending the determination of the arbitration process to resolve the disputes between the parties. They also seek for their funds



contractually retained by the Respondents (10% retention) which may be irregularly seized if no protection is accorded to them by this court.

6. They urge the court to grant the orders sought to preserve the subject matter of the suit as they move the dispute to an arbitration tribunal in accordance with the contracts herein. Correspondences annexed to the supporting affidavit attest to the deponed fact hereto.
7. Pursuant to the directions of this court the Respondents were served with the application herein but as at the time of writing this ruling they had neither entered appearance nor filed a response to the application. An affidavit of service by KELVIN OMONDI, a duly authorized process server was filed as evidence of service in which he confirms under oath he effected physical service to the Respondents at their offices at Jogoo House, 9th Floor and 4th Floor and has returned a duly stamped court process as evidence thereto. He confirms having served the 1st Respondent at their litigation department at Sheria House, 7th Floor.
8. I am therefore satisfied that the Respondents herein were duly served and have had notice of the court documents herein.
9. The High Court of Kenya, under section 7 (2) of the Arbitration Act, has wide powers and jurisdiction to make orders relating to interim orders for the purpose of preserving the status quo pending and during arbitration. Section 7 (20) of the Arbitration Act provides as follow:-

“(2) Where a party applies to the High Court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the High Court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.”

10. This was the position taken by the court in Don-Woods Company Ltd v Kenya Pipeline Company Ltd [2005] eKLR (Ojwang J), granting the orders sought, held that “the jurisdiction to grant the injunctive relief under section 7 of the Arbitration Act was meant to preserve the subject matter of the suit pending determination of the issues between the parties.”
11. I have considered the application and the averments by the Applicants herein. I am satisfied that the Applicants have made out a case for grant of orders sought in the application before this court. I therefore allow the application dated 20th January 2025 as prayed and grant the orders sought therein. Costs of the application herein are in the cause. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 3RD DAY OF MARCH 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

Mr. Ojwang for the Plaintiffs/Applicants.

Ms. Caroline Kanini for the Defendants/Respondents.

Amos - Court Assistant

