



**Glee Hotel Limited v Dclick & another (Commercial Case E177 of 2024)
[2025] KEHC 2921 (KLR) (Commercial and Tax) (5 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 2921 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E177 OF 2024
JWW MONG'ARE, J
MARCH 5, 2025**

BETWEEN

GLEE HOTEL LIMITED APPLICANT

AND

**GERTRUDO HENRICUS ANTONIUS MARA VAN DCLICK 1ST
RESPONDENT**

**GERTRUDO JOSEPHINA MARIA CORNELIA OPHEI VELD 2ND
RESPONDENT**

RULING

1. What is before this Honourable Court is the Plaintiff's Originating Summons (OS) Application filed on 9th April 2024 seeking the following orders:-
 1. That the claim arising herein out of a sale agreement dated 25th September 2023, be referred for mediation/Arbitration through the President of the Chartered Institute of Arbitrators, Nairobi Chapter for appointment of an arbitrator in accordance with clause 17 of the Agreement, failing which the court does make orders as to meet the end of justice.
 2. That pending the determination of the mediation/arbitration, proceedings, an order of injunction be issued restraining the Defendants, whether by themselves, their agents or otherwise howsoever from advertising for sale, offering for sale, transferring disposing, alienating or otherwise dealing in any manner whatsoever with shares in Maisha Nishike Two Hundred And Sixteen Limited And Nairobi/block 194/47.
 3. Further and in the alternative the issues in dispute with regard to the sale agreement be determined by this Honourable Court



4. This Honourable Court be pleased to make such orders as it may deem in the circumstances of this summons to grant.
 5. Costs of this summons be provided for.
2. Alongside the Originating Summons the Applicant also filed a Notice of Motion dated 9th April 2024 filed under Sections 1A, 1B and 3A of the [Civil Procedure Act](#) and Order 40 Rule 1 & 2, Order 51 Rule 1 of the civil procedure Rules seeking the following orders:
1. That pending the hearing of this suit, a temporary order of injunction be issued restraining the Defendants whether by themselves, their agents or otherwise howsoever from advertising for sale, offering for sale, transferring, disposing, alienating or otherwise dealing in any manner whatsoever with shares in Maisha Nishike Two Hundred and Sixteen Ltd and/ or the property known as Nairobi /Block 194/47.
 2. That costs of this application be provided for.
 3. The application is supported by the grounds set out thereunder and the supporting affidavit of Mary Mungai, a director of the Plaintiff, sworn on 9th April, 2024. The said application is opposed and the Respondents have filed a replying affidavit sworn by Gertrudo Josphina Cornelia Ophet Yeld, the 2nd Respondent on 18th April 2024. The matter was canvassed by written submissions. Both parties filed their respective submissions with the Applicant filing theirs dated 28th June 2024 and the Respondents submissions are dated 12th July 2024, which I have carefully considered.

Analysis And Determnation:-

4. The dispute subject matter of this application and the Originating summons arise out of a sale agreement dated 25th September 2024 for sale and purchase of shares in Maisha Nishike Two hundred and Sixteen Limited and LR No. Nairobi/Block 194/47. Both parties agree that disputes arising out of the said agreement are to be determined by Arbitration in line with clause 17.2 of the said agreement which provides as follows:-
 - 17.2; Should any dispute arise between the parties with regard to the interpretation, rights, obligations and / or implementation of any one or more of the provisions of this agreement, the Parties shall in the first instance attempt to resolve such dispute by amicable negotiations between the primary contact persons, or other persons that the parties shall nominate for this purpose. Should such negotiations fail to achieve a resolution within fourteen calendar(14) days, either party may declare a dispute by written notification to the other, whereupon such dispute shall be referred to arbitration under the following terms:
 - 17.2.1. such arbitration shall be conducted in accordance with the Rules of he Chartered Institute of Arbitration, Kenya Branch
 - 17.2.2. The place and seat of the arbitration shall be Nairobi, Kenya and the language of arbitration shall be English;
 - 17.2.3. The Award of the arbitration tribunal shall be final and binding upon the parties to the extent permitted by law and any party may apply to a court of competent jurisdiction for enforcement of such award; the award of the arbitration may take the form of an order to pay an amount or to perform or to prohibit certain activities;



17.2.4; each party shall bear its own cost of preparing and presenting its case and the costs of arbitration including fees and expenses of the arbitrator) shall be shared equally between the parties unless the award provides otherwise, and;

17.2.5; notwithstanding the above provision of this clause, either party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrator.

5. The above clause 17 of the sale agreement takes away the dispute from the jurisdiction of this court. What therefore is left for the court to determine is whether the applicant is entitled to an interim measure of protection during the pendency of the arbitration of the dispute between the parties as provided for under section 7 of the *Arbitration Act* which provides as follows;

“7. Interim measures by courts

1. it is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.....”

6. The Court of Appeal in *Safaricom Limited vs Ocean View Beach Hotel & 2 others* (2010) eKLR set out the principles to be applied where a party seeks an order for protection as follows:-

“under our system of law on arbitration the essentials which the court must take into account before issuing the interim measures of protection are;-

1. The existence of an arbitration agreement.
2. Whether the subject matter of arbitration is under threat.
3. in the special circumstances which is of the appropriate measure of protection after an assessment of the merits of the application.
4. For what period must the measure be given especially if requested for before the commencement of the arbitration so as to avoid encroaching on the tribunal’s decision making power as intended by the parties.”

7. When this matter was considered by the court on 11th April 2024, the court did grant a temporary order of injunction restraining the Defendants from disposing or otherwise alienating the shares in Maisha Nishike Two Hundred and Sixteen Limited and the property known as LR Nairobi/ Block 194/47 pending the hearing of this application. I agree with the sentiments of the Defendants that indeed this court lacks the requisite jurisdiction to determine the issues in dispute by virtue of the provisions of clause 17.2 in the agreement for sale set out above. What this court is capable of doing is as provided in the said agreement under clause 17.2.5 is to grant interim measures of protection to a party if it is persuaded that there is established a basis for such orders. Section 7 of the *Arbitration Act* indeed speaks to the powers of the court in a matter where parties have chosen to resolve their disputes through arbitration.

8. I note that the Defendants object to the grant of an interim injunctive relief on the basis that the Applicant has not moved the arbitral process to the next stage by initiating the arbitration process. The Defendants further argue that they have all along been willing to complete the sale agreement between the parties. I have looked at the sale agreement and especially clause 17.2 therein and I note that under



the said clause under clause 17.2.1 the duty to initiate the arbitration process is placed on either party. It reads as follows:-

“Should any dispute arise between the parties with regard to the interpretation, rights, obligations and / or implementation of any one or more of the provisions of this agreement, the Parties shall in the first instance attempt to resolve such dispute by amicable negotiations between the primary contact persons, or other persons that the parties shall nominate for this purpose. Should such negotiations fail to achieve a resolution within fourteen calendar(14) days, either party may declare a dispute by written notification to the other, whereupon such dispute shall be referred to arbitration under the following terms:”

9. The Defendants have not demonstrated whether they have initiated the process as required in the above provision in the sale agreement. The duty is placed on either party and is not the sole obligation of the applicant. I disagree with the arguments by the Defendant that the applicant has failed to initiate the arbitration process. The agreement places this duty on both parties and therefore it cannot be the sole reason why the court cannot grant the prayers sought. The applicant argues that there is need to protect and preserve the subject matter of the dispute herein. The dispute revolves around a sale of shares in Maisha Nishike Two Hundred and Sixteen Limited and the property known as Nairobi/Block 194/7 and a cursory reading of the agreement herein and the pleadings herein reveal that indeed the applicant has already made substantial payment towards the same. I am therefore persuaded that indeed if this court does not grant the prayers sought, then the arbitration process will be an academic exercise as nothing stops the Defendant with proceeding to enter into an agreement for the disposal of the shares and the property, as they had already intimidated.
10. It is therefore my finding that the present application and the originating summons are merited. I therefore allow the same and hereby grant an order of injunction restraining the Defendants, whether by themselves, their agents or otherwise howsoever from advertising for sale, offering for sale, transferring disposing, alienating or otherwise dealing in any manner whatsoever with shares in Maisha Nishike Two Hundred and Sixteen Limited and Nairobi/block 194/47 pending the determination of the mediation/arbitration proceedings between the parties. Costs of this application will abide the outcome of the Arbitration process. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5TH DAY OF MARCH 2025

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J.W.W. MONG'ARE

JUDGE

In the Presence of:-

Ms. Ithondeka for the Plaintiffs/Applicants

Mr. Kairaria and Ms. Waithera Mugo for the Defendants/Respondents

Amos- Court Assistant

