



REPUBLIC OF KENYA



**Mwendwa & 2 others v Muvelah & 7 others (Commercial Case E433 of 2023)
[2025] KEHC 4199 (KLR) (Commercial and Tax) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4199 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E433 OF 2023**

A MABEYA, J

APRIL 3, 2025

BETWEEN

**MUMO IKUI MWENDWA 1ST PLAINTIFF
VONZA KAVILA MWENDWA 2ND PLAINTIFF
NZAMBU MULAIMUMWENDWA 3RD PLAINTIFF**

AND

**SAMMY MUVELAH 1ST DEFENDANT
JAMES NJUGUNA MURI 2ND DEFENDANT
SAMMY MULWA NGANGI 3RD DEFENDANT
PROF SUKI KALOO KATHUKA MWENDWA 4TH DEFENDANT
MUVOSUNZA INVESTMENT LIMITED 5TH DEFENDANT
ACADEMIC SERVICES LIMITED 6TH DEFENDANT
MUVOKANZA LIMITED 7TH DEFENDANT
RIVERSIDE INVESTMENTS LIMITED 8TH DEFENDANT**

RULING

1. This ruling determines the Motion dated 21/9/2023 by the 1st – 3rd defendants/applicants. The same was brought under section 6 of the [Arbitration Act](#), Rule 2 of the [Arbitration Rules](#) and Article 159 (2) of the [Constitution](#).



2. The applicants sought that the proceedings herein be stayed and the dispute between the parties be referred to arbitration in line with the terms of the Shareholders Agreement dated 24/8/2015 and that the interim orders issued on the 12/9/2023 be set aside.
3. The application was based on the grounds therein as well as the supporting affidavit sworn by the 1st applicant.
4. The applicants contended that the dispute between the parties as set out in the plaintiffs' Notice of Motion and Complaint both dated 30/8/2023 arise out of or relate to the Shareholders Agreement dated 24/8/2015. That in view thereof, they are subject to Clause 15 therein that subject such disputes to arbitration.
5. That the plaintiffs filed a similar suit and application against the 1st – 4th defendant in Milimani HCCCOMM E242/2023 Mumo Mwendwa & Muvosunza Investment Ltd v Sammy Muvelah, Suki Mwendwa, Sammy Ngangi, Muri James Njuguna in which they applied to refer to arbitration. That the court declined to grant the plaintiffs therein interim orders.
6. That subsequently, the plaintiffs withdrew the said suit prior to the hearing. That the plaintiffs are also parties in the succession case in Milimani HCFP&A E2167/2021 – *In the Estate of Mwendwa Kyale* in which they have filed a similar application against the 1st defendant/applicant who is the executor of the Estate.
7. That in the said succession case, they sought an injunction to restrain the dealing with the shares of the 5th defendant but the Family Court declined to grant interim orders. That in the premises, the instant suit is sub judice the 2 aforementioned suits.
8. Although the Court gave directions on 12/11/2024 that the application be responded to, as at the time of writing this ruling, there was no response from the plaintiffs on record or on CTS to the application. That being the case, the only issue for determination is whether the Court should refer the dispute herein to Arbitration and set aside the interim orders issued on the 13/9/2023.
9. In *UAP Provincial Insurance Company Limited v Michael John Beckett* (2018) eKLR, the Court of Appeal held of section 6(1)(b) of the *Arbitration Act* as follows: -

“It is clear from this provision that the enquiry that the court undertakes and is required to undertake under Section 6(1)(b) of the *Arbitration Act* is to ascertain whether there is a dispute between the parties, and if so, whether such dispute is with regard to matters agreed to be referred to arbitration”.
10. In this regard, it is clear that with respect to section 6(1) of the *Arbitration Act*, an applicant must fulfil two conditions; the first condition is that the application should have been brought not later than the time of entering appearance or filing a defence and that there should be a dispute capable of being referred to arbitration in terms of the arbitral agreement.
11. In *Adrec Limited v Nation Media Group Limited* [2017] eKLR, the court held 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 the entry of appearance make the application for reference to arbitration”



12. In *Charles Njogu Lofty v Bedouin Enterprises Ltd* [2005] eKLR, the Court of Appeal stated that: -

“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 pleading or at the time of taking any step in the proceedings.”

13. From the record, the application to refer the matter to arbitration was filed contemporaneous with the entry of appearance as required by section 6(1) of the *Arbitration Act*. The application was, therefore, brought within the ambit of the law and the plaintiffs have not argued otherwise.

14. The plaintiffs have also not argued that the agreement to refer the matter to arbitration is null and void. That means that Clause 15 of the Shareholders Agreement dated 24/8/2015 is a valid agreement between the parties on disputes arising from the Shareholders Agreement.

15. In *Anne Mumbi Hinga v Victoria Njoki Gathara* [2009] eKLR, the Court of Appeal reiterated the principle of non-intervention by the courts where parties have agreed to resolve any dispute between them by arbitration.

16. Accordingly, and for the above reasons, the application dated 21/9/2023 is found to be meritorious and allowed as prayed. Consequently, this matter is hereby stayed and the dispute referred to arbitration and the parties to appoint an arbitrator in terms of the shareholders agreement dated 24th August, 2015 within 30 days of the date hereof. In default, the Chair for the time being of the Chartered Institute of Arbitrators (Kenya Branch) do appoint an Arbitrator within 30 days of 3rd May, 2025 without fail. Costs to be in the arbitration.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 3RD DAY OF APRIL, 2025.

A. MABEYA, FCI Arb

JUDGE

