



REPUBLIC OF KENYA



**Maya Duty Free Limited v Kenya Airports Authority (Commercial Case E182 of 2022)  
[2025] KEHC 6819 (KLR) (Commercial and Tax) (26 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6819 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E182 OF 2022**

**AA VISRAM, J**

**MAY 26, 2025**

**BETWEEN**

**MAYA DUTY FREE LIMITED ..... PLAINTIFF**

**AND**

**KENYA AIRPORTS AUTHORITY ..... DEFENDANT**

**RULING**

1. I have considered the Notice of Motion Application dated 14<sup>th</sup> February, 2023, together with the affidavit sworn in support of the same of even date seeking to strike out the suit under Order 2, rule 15 of the Civil Procedure Rules, 2010.
2. I take note that at the date of the hearing of the Application, the Respondent had not filed any response to the Application. Further, I would point out from the outset that this Court issued directions granting the Respondent time to file its reply on 21<sup>st</sup> November, 2023, and thereafter, issued directions granting the Respondent further time to file its response on 18<sup>th</sup> April, 2024, and finally, granted further time on 6<sup>th</sup> November, 2024. No response was ever filed. Therefore, I find that in the absence of the same, the Application is unopposed, and the facts contained therein are uncontroverted.
3. The Applicant submitted that by virtue of Section 12(1)(c) of the *Kenya Airports Authority Act* (the “KAA Act”) the Applicant has the unfettered powers to provide such other amenities or facilities for passengers and other persons making use of the services or the facilities provided by the Authority as may appear to the Board necessary or desirable. Moreover, Section 12(3)(j)(ii) of the KAA Act also empowers the Applicant to enter into agreements with any person, agency or Ministry for the performance or provision by of any of the services or facilities which may be performed or provided by the Authority.



4. In exercise of these powers, the Applicant entered into a Lease Agreement dated 5<sup>th</sup> October, 2007, with the Respondent for a portion of the terminal building at the Jomo Kenyatta International Airport (“JKIA”), for purposes of establishing and operating duty-free shops. It is this Agreement which the Respondent seeks to have renewed in the main suit and which is a power exercisable by the Applicant under Section 12 of the KAA Act. Consequently, the Applicant submitted that this invites the application of Section 33 of the KAA Act.
5. Section 33 of the KAA Act is categorical on the manner in which a dispute concerning the exercise of the Applicant’s powers under, inter alia, Section 12 should be resolved. There should be an initial attempt at agreeing on the compensation due, failing which the dispute should be resolved through arbitration under the auspices of the Nairobi Centre for International Arbitration. Under Section 34 (a) of the KAA Act, such proceedings should be preceded by a prior notice to the Applicant’s Managing Director of not less than one month in duration. This process was not followed.
6. The Applicant pointed out that the legal requirement to comply with the above provisions is not unfamiliar to the Respondent. In *Maya Duty Free Limited v. Attorney General & anor*, Pet. No. 93 of 2010 [2019] eKLR, the Respondent’s petition in that matter was dismissed with costs for failing to comply with the very same provisions. The Applicant urged this Court to strike out the suit for the same reasons. The Applicant contended that the constitutionality of this requirement has also been determined in two recent decisions by the Supreme Court of Kenya.
7. As regards the nature of the relief sought, the Applicant submitted that Section 33(1) of the KAA Act circumscribes the nature of remedy that is available in a dispute such as the present. It provides that the available remedy is compensation. However, the Respondent has sought permanent injunctions. It submitted that is not difficult to conceive the rationale for this restriction, bearing in mind the crucial functions that the Applicant undertakes as well as the domestic and international consequences if the Applicant’s operations are paralysed through injunctive reliefs.
8. Finally, the Applicant argued that the suit has been overtaken by events. It submitted that the Respondent seeks injunctive orders to stop a tendering process that was undertaken in the year 2022, so as to purportedly enforce the terms of a lease (on which this suit stands) which lease expired more than five (5) years ago, on 30<sup>th</sup> April, 2019. It pointed out that after the expiry of the Lease, the Respondent was issued a temporary occupation license. In effect, the Respondent was no longer a lessee, but a licensee.
9. Further, as deponed in the Applicant’s supporting affidavit of Margaret Munene, the tendering process was concluded and spaces which the Plaintiff seeks to secure through this suit no longer exist. As such, the injunctive orders being sought against the Respondent are no longer sustainable.
10. Given the above context, and especially bearing in mind, that parties are bound by an arbitration agreement, which has not disputed, and which therefore remains in force, and is the chosen forum for dispute resolution between the parties; I am satisfied that the application is with merit, and the same is accordingly allowed.
11. The suit is hereby struck out with costs and the costs of the Application shall be borne by the Plaintiff. The file is marked as closed.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 26<sup>TH</sup> DAY OF MAY, 2025**

**ALEEM VISRAM, FCIArb**

**JUDGE**



In the presence of;

Court Assistant: Sakina

.....for Plaintiff/Respondent

.....for Defendant/Applicant

