



**North China Power Engineering Company Limited v Kenya Electricity
Transmission Company Limited (Commercial Civil Suit E303 of 2025)
[2025] KEHC 10391 (KLR) (Commercial and Tax) (16 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10391 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CIVIL SUIT E303 OF 2025**

PM MULWA, J

JULY 16, 2025

BETWEEN

NORTH CHINA POWER ENGINEERING COMPANY LIMITED PLAINTIFF

AND

KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED . DEFENDANT

RULING

1. This ruling dispose two applications; the Plaintiff's application dated 28th April 2025 and the Defendant's applications dated 27th June 2025. The applications were canvassed by way of oral arguments by learned counsel for parties, which I have considered.
2. Section 7 of the *Arbitration Act* provides as follows:

“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.”
3. From the prayers sought in the two applications, there is concurrence that this is a dispute for arbitration. The only point of departure is the prayer for interim measures of protection sought by the Plaintiff pending the arbitration proceedings.



4. In *Safaricom Limited v Ocean View Beach Hotel Limited & 2 others* [2010] eKLR, the Court of Appeal outlined the nature of interim protective measures and the factors to be taken into account before an interim order of protection can be granted. The court stated:

“Interim measures of protection in arbitration take different forms and it would be unwise to regard the categories of interim measures as being in any sense closed (say restricted to injunctions for example) and what is suitable must turn or depend on the facts of each case before the court or the tribunal – such interim measures include, measures relating to preservation of evidence, measures aimed at preserving the status quo, measures intended to provide security for costs and injunctions. Under our system of the 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 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.”
5. The court in granting interim measures exercises judicial discretion to further the cause of justice and to prevent the abuse of the court process. (See the Court of Appeal decision in *Scope Telematics International Sales Limited v Stoic Company Limited & another* [2017] eKLR). In doing so, the court is called upon to strike a balance to ensure that the intended arbitration proceedings are not prejudiced either by failing to protect the status quo and/or the subject matter of the intended arbitration, and at the same time to ensure or avoid making an order that goes to resolving the dispute between the parties which ought to be left exclusively in the hands of the arbitrator. (See the High Court decision in *Dimension Data Solutions Limited v Kenyatta International Convention Centre* [2016] eKLR, para 11).
6. Applying these principles to the instant case, it is not in dispute that there is an arbitral clause in the agreement between the parties. In my considered view, what is in contention is whether the subject matter for arbitration is under threat or whether there exists special circumstances to warrant the orders sought.
7. The Plaintiff’s case is that the Defendant is deriving income from the use of the subject matter and if the orders sought are not granted, the Defendant is likely to use the money for other purposes and deprive the Plaintiff of its income.
8. In resolving this matter, I am aware that the court is required to exercise great circumspection in commenting on the matters in dispute.
9. Upon perusal of the record, I find no evidence that the subject matter of arbitration is under any threat, and there is no demonstrable irreparable injury to be occasioned, or if it were to be suffered that monetary compensation would be inadequate if awarded in arbitration.
10. Further, based on the material before the Court, I do not think that under the circumstances, it will be proper to restrain the defendants from dealing with a critical transnational infrastructure project



which would not only harm public interest but also Kenya's energy security. Granting the orders as sought by the Plaintiff would effectively determine the dispute, violating the arbitration agreement.

11. Arbitration is a time bound dispute resolution mechanism and is designed to save time. Parties did not however, submit on the timelines. The prayer for interim measure of protection must fail in the circumstances.
12. To the extent that parties are agreed on the correct forum for this dispute, I exercise my discretion and direct that that parties do appoint an arbitrator for the formal commencement of the arbitral proceedings. For these applications, each party shall bear its own costs.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 16TH DAY OF JULY 2025.

PETER M. MULWA

JUDGE

In the presence of:

Mr. Peter Wanyama for Plaintiff

Mr. Kisigwa for Defendant

Court Assistant: Carlos

