



REPUBLIC OF KENYA



**KENYA LAW**  
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**County Government of Nyeri v Kimanthe Communications Agencies Limited (Miscellaneous Civil Application E016 of 2025) [2025] KEHC 12942 (KLR) (18 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12942 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
MISCELLANEOUS CIVIL APPLICATION E016 OF 2025  
DKN MAGARE, J  
SEPTEMBER 18, 2025**

**BETWEEN**

**COUNTY GOVERNMENT OF NYERI ..... APPLICANT**

**AND**

**KIMANTHE COMMUNICATIONS AGENCIES LIMITED ..... DEFENDANT**

**RULING**

1. This is a ruling arising from a Chamber Summons application dated 3.4.2025.
2. The application seeks the following reliefs:
  - a. Spent
  - b. Pending the hearing and determination of the application, the court be pleased to issue interim order directing the Respondent to avail all access rights and data in the Revenue Management System as agreed by the parties under clause 8 of the Revenue Management System dated 30.4.2018 as communicated by the Applicant vide letter dated 24.3.2025.
  - c. Upon grant of prayer 2 herein, this court be pleased to direct that any further or other disputes between the parties be referred to Arbitration as per clause 14 of the Revenue Management System dated 30.4.2018.
  - d. Further orders or directions as may be convenient to the court.
  - e. Costs be provided for.
3. The Respondent opposed the application vide a Replying Affidavit sworn by Anthony Kimata Theuri on 25.4.2025 in which it was deposed that the Revenue Management System has been implemented without any difficulty.
4. The Respondent opposed the termination, terming it unlawful on the following grounds:



- a. The letter of termination is signed by County Executive Committee member for Finance of the Revenue Management System.
  - b. The Respondent is not in breach of the Agreement as alleged but contends that it is the Applicant that has breached Clause 4(c) of the Agreement for failing to execute a Service level agreement.
5. It was also deposed that the Applicant designed and planned to prematurely terminate the contract before the expiry of the 10 year contract with a view of denying the Respondent an opportunity to finalize the contract as envisaged in Clause (c) with regard to entering into a Service Level Agreement.

### **Submissions**

6. The Applicant filed submissions. It was submitted that the question of existence or otherwise of dispute between the parties herein under the subject contract is a matter for the arbitral tribunal to decide. Reliance was placed on the case of Euromec International Limited v Shandong Taikai Power Engineering Company Limited [2021] KEHC 93 (KLR), where Justice Mativo J, (as he was then), stated as follows:

“Any event, the question of whether there existed a dispute or not touched on the jurisdiction of the arbitrator. The arbitrator’s jurisdiction could be challenged by attacking the agreement’s validity or the tribunal’s jurisdiction over the subject matters, among other challenges...”

7. It was also submitted that the interim relief sought was necessary as the arbitration agreement exists and the subject matter is under threat - the subject matter to be preserved is indeed the Revenue System Management specially as relates whether the Respondent has the rights to continue offering services of maintenance of the system as per the provisions of Clause 4(c) of the Agreement. Reliance was placed inter alia on Safaricom Limited v Ocean View Beach Hotel Limited & 2 Others [2010] KECA 346 (KLR).
8. The Applicant submitted that *Arbitration Act* incorporates the principle of competence-competence in Kenyan arbitral law and practice (section 1). The courts are mandated to determine issues relating to a tribunal’s jurisdiction only when the jurisdiction is subject to challenge by the tribunal.
9. Based on Safaricom Limited v Ocean View Beach Hotel Limited & 2 Others (supra), it was submitted that the High Court’s jurisdiction at this stage is strictly limited. That the court is not to determine the substantive merits of the dispute or the validity of the termination.
10. The Respondent did not file submissions.

### **Analysis**

11. The issue is whether a temporary injunction and interim protections measures should be granted. In the matter of this nature seeking a temporary injunction, the law governing the granting of interlocutory injunction is set out under Order 40(1) (a) and (b) of the Civil Procedure Rules 2010 and the conditions for the granting of an interlocutory injunction are now well settled. In *Giella v Cassman Brown & Co Ltd* [1973] EA 358 at pg. 360, it was stated as follows:-

“First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of



damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience. (EA Industries v Trufoods, [1972] EA 420.)”

12. However, it has to be appreciated that the conditions that apply to a meritorious application for an injunction do not necessarily determine interim measures sought in preservation of the subject matter in relation to arbitration. In the case of *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. The appeal arose from a decision of this court. At page 13 of its judgment, the Court of Appeal had this to say:

“A careful look at all the provisions cited in the heading in the application and invoked by the appellant in the superior court clearly shows that, all the provisions including the *Civil Procedure Act* and rules do not apply to arbitral proceedings because Section 10 of the Arbitration Act makes the *Arbitration Act* a complete code and rule 11 of the Arbitration Rules cannot override Section 10 of the *Arbitration Act* which states:

“Except as provided in this Act no court shall intervene in matters governed by this Act.”

In the light of the above, the superior court did not have jurisdiction to intervene in any manner not specifically provided for in the *Arbitration Act*. This includes entertaining the application the subject matter of this appeal and all the other applications purporting to stay the award of the judgment/decreed arising from the award.”

13. I note that the Applicant is mainly seeking orders in the nature of interim measures of protection and security under Section 7 of the *Arbitration Act* which provides as follows:

7. Interim measures by court

- (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.
- (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.

14. In my view, this is an interlocutory application and the court will not deal with the merits of the arbitration at this stage. What this court will establish is whether there is dispute to be referred to arbitration. Arbitration thus is the forum through which the suit should be determined on its merits.

15. Therefore, this Court shall invoke the doctrine of forum non conveniens. This doctrine of forum non conveniens was discussed at length by the House of Lords in *Spiliada Maritime Corporation vs Cansulex Ltd* [1986] 3 ALL ER 843 (HL) and it was partly stated at 853 – 854 thus:

“... whether the Latin tag ‘forum non conveniens’ is apt to describe this principle. For the question is not one of convenience, but of the suitability or appropriateness of the relevant jurisdiction. However, the Latin tag (sometimes expressed as forum non conveniens and sometimes as forum conveniens) is so widely used to describe the principle, not only in England and Scotland, but in other Commonwealth jurisdictions and in the United States, that it is probably sensible to retain it. But it is most important not to allow it to mislead us into thinking that the question at issue is one of ‘mere practical convenience’. Such a suggestion was emphatically rejected by Lord Kinneer in *Sim v Robinow* (1892) 19 R (Ct



of Sess) 665 at 668 and by Lord Dunedin, Lord Shaw and Lord Sumner in the Societe du Gaz case 1926 SC (HL) 13 at 18, 19, and 22 respectively. Lord Dunedin said, with reference to the expressions forum non competens and forum non conveniens:

‘In my view, “competent” is just as bad a translation for “competens” as “convenient” is for “conveniens”. The proper translation for these Latin words, so far as this plea is concerned, is “appropriate”.’

Lord Sumner referred to a phrase used by Lord Cowan in *Clements vs Macaulay* (1866) 4 Macph (Ct of Sess) 583 at 594, viz more convenient and preferable for securing the ends of justice’, and said: ‘... one cannot think of convenience apart from the convenience of the pursuer or the defender or the Court, and the convenience of all these three, as the cases show, is of little, if any, importance. If you read it as “more convenient, that is to say, preferable, for securing the ends of justice,” I think the true meaning of the doctrine is arrived at. The object, under the words “forum non conveniens” is to find that forum which is the more suitable for the ends of justice, and is preferable because pursuit of the litigation in that forum is more likely to secure those ends.’

In the light of these authoritative statements of the Scottish doctrine, I cannot help thinking that it is wiser to avoid use of the word ‘convenience’ and to refer rather, as Lord Dunedin did, to the appropriate forum”. (Emphasis added)

16. I note that the issue is whether the court is able to grant an interim order at this stage. This is without interrogating the dispute on merits.
17. This Court serves to encourage the arbitral process as stipulated under Article 159(2)(c) of *the Constitution* which enjoins courts and tribunals to be guided by and to promote alternative forms of dispute resolution including arbitration. There is a valid arbitral clause, hereto say clause 14 of the contract dated 30.4.2018.
18. Consequently, I must decide whether such an order falls within the rubric of interim measure of protection. In *Safaricom Limited v Ocean View Beach Hotel Limited & 2 others* Civil Application No. NAI 327 of 2009 [2010] eKLR the Court stated that interim orders of protection may take many forms necessary to preserve the status quo or preserve the subject matter of the arbitration.
19. The Applicant seeks for an order that pending the hearing and determination of the application, the court be pleased to issue interim order directing the Respondent to avail all access rights and data in the Revenue Management System as agreed by the parties under clause 8 of the Revenue Management System dated 30.4.2018 as communicated by the Applicant vide letter dated 24.3.2025.
20. The principles governing the grant of interim orders of protection under the *Arbitration Act* were outlined by the Court of Appeal in *Safaricom Limited v Ocean View Beach Hotel Limited & 2 others* (supra) where Nyamu JA., observed as follows;

“By determining the matters on the basis of the [GIELLA] principles the superior court failed to appreciate what interim measures of protection entail in terms of arbitration law, during or before the commencement of an arbitration. It may be necessary for an arbitral tribunal or a national court to issue orders intended to preserve evidence, to protect assets, or in some other way to maintain the status quo pending the outcome of the arbitration proceedings themselves. Such orders take different forms and go under different names. In the case of Kenya, the *Arbitration Act* is modeled on the Model Law and the UNCITRAL Rules and this is the reason they are known as “interim measures of protection” under section 7 of the



Arbitration Act. On the other hand, in the English version of the ICC Rules for example, they are known as “interim conservatory measures”. Whatever their description however, they are intended in principle to operate as “holding” orders, pending the outcome of the arbitral proceedings. The making of interim measures was never intended to anticipate litigation.

.....

An interim measure of protection such as that sought in the matter before us is supposed to be issued by the court under section 7 in support of the arbitral process not because it satisfies the civil procedure requirements for the grant of injunctions as the High Court purported to do in this matter.

To illustrate the point Article 26-3 of the UNICTRAL Arbitration rules states:-

“A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of the agreement.”

Section 7 of the Arbitration Act is modeled on this. However, in the matter before us and with due respect, the Commercial Court (Koome, J.) contravened the above principles by firstly either declining to issue any measure of protection or granting such a measure. The Court also failed to correctly address the principles for the issue of any such measures and worse still, the supreme court took over the subject matter altogether and ruled on the merits of the subject matter of the arbitration thereby prejudicing the outcome of the arbitration. This explains why in the special circumstances of this matter, this Court must take extraordinary measures to rectify an extraordinary illegality. 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.” [Emphasis mine]

21. It is my considered view that directing the Respondent to implement a clause in a disputed contract encroaches on the substratum of the arbitration and the Arbitral Tribunal’s decision-making power intended by the parties.



22. The Applicant has not also demonstrated the manner in which the subject matter is under threat or the irreparable harm should the Respondent not implement the impugned clause. In *Seven Twenty Investments Limited v Sandhoe Investment Kenya Limited*, [2013] e KLR, the court further held:

“A perusal of section 7 of the *Arbitration Act* clearly shows that the issue of whether or not there is a dispute or whether or not there would be losses by either side would not be a factor for a court to take into consideration when deciding whether or not it should grant an order of interim measure of protection or injunction to safeguard the subject matter of the arbitral proceedings. All that a court would be interested in is whether or not there was a valid arbitration agreement and if indeed the subject matter of the arbitral proceedings was in danger of being wasted or dissipated so as to preserve the same pending the hearing and determination of the arbitral reference.”

23. It is also my considered view that the impugned clause does not invalidate the operation of an arbitration agreement that may be within the contract as the Arbitration clause is independent of the contract dated 30.4.2018. This concept is explained in *Titus Kitonga & another v Total Kenya Limited & another* [2018] eKLR where the Court stated that:-

19. In my considered opinion, the law is settled that an arbitration clause in contract between the parties is considered as independent, separate and severable from the main contract. The doctrine of separability recognizes the arbitration clause in a main contract as a separate contract, independent and distinct from the main contract. The essence of the doctrine is that the validity of an arbitration clause is not bound to that of the main contract and vice versa. Therefore the illegality or termination of the main contract does not affect the jurisdiction of an arbitration tribunal based on an arbitration clause contained in that contract. The obligation to resolve all disputes by arbitration continues even if the main obligation or indeed the contract expires or is vitiated.

20. Thus separability protects the integrity of the agreement to arbitrate and plays an important role in ensuring that the party's intention to submit disputes is not easily defeated. In this way it also protects the jurisdiction of the arbitration tribunal.

21. In the same vein, Article 16 of the Model Law and Section 17(a) of the *Arbitration Act* of No. 4 of 1995, clearly states that “an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract”. I therefore concur with the submissions of the Applicants that, the termination of the MLAs herein has no legal effect on the arbitral clauses therein.”

24. In the case of *Nyutu Agroviet Limited v Airtel Networks Kenya Limited*; *Chartered Institute of Arbitrators-Kenya Branch* [2019] KESC 11 (KLR) the Supreme Court addressed the question as follows:

52. We note in the above context that, the *Arbitration Act*, was introduced into our legal system to provide a quicker way of settling disputes which is distinct from the court process. The Act was also formulated in line with internationally accepted principles and specifically the Model Law. With regard



to the reason why some provisions of the Act speak to the finality of High Court decisions, the Hansard of the National Assembly during the debate on the *Arbitration Act* indicates that,

“the time limits and the finality of the High Court decision on some procedural matters was to ensure that neither party frustrates the arbitration process thus giving arbitration advantage over the usual judicial process.”

It was also reiterated that the limitation of the extent of the courts’ interference was to ensure an, “expeditious and efficient way of handling commercial disputes.”

53. Similarly, the Model Law also advocates for “limiting and clearly defining court involvement” in arbitration. This reasoning is informed by the fact that “parties to an arbitration agreement make a conscious decision to exclude court jurisdiction and prefer the finality and expediency of the arbitral process.” Thus, arbitration was intended as an alternative way of solving disputes in a manner that is expeditious, efficient and devoid of procedural technicalities. Indeed, our Constitution in article 159(2)(c) acknowledges the place of arbitration in dispute settlement and urges all courts to promote it. However, the arbitration process is not absolutely immune from the Court process, hence the present conundrum.

54. The Model Law indeed advises that all instances of courts intervention must be provided for in legislation. That is the explanation that the Model Law accords to article 5 which is in pari materia with section 10 of the Act. The said section 10 provides,

“Except as provided in this Act, no court shall intervene in matters governed by this Act.”

On the other hand, article 5 provides,

“In matters governed by this Law, no court shall intervene except where so provided in this Law.”

55. In illuminating the meaning of article 5, the explanatory notes of the Model Law provide that, beyond the instances specifically provided for in the law, no court shall interfere in matters governed by it. That further, the main purpose of article 5 is to ensure predictability and certainty of the arbitral process. That understanding is also discerned in the Court of Appeal decision of Singapore in the case of *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd* and another appeal 2012 SGCA 57 where the Court stated that:

“The effect of art 5 of the Model Law is to confine the power of the Court to intervene in an arbitration to those instances which are provided for in the Model Law and to ‘exclude any general or residual powers’ arising from sources other than the Model Law....The raison d’être of art 5 of the Model Law is not to promote hostility towards judicial intervention but to ‘satisfy the need for certainty as to when court action is permissible’.”



56. In the above case, the court noted that article 5 could be compared to section 47 of the Singapore *Arbitration Act* (cap 10, 2002 Rev Ed), which governed the proceedings of that case and provides:

“The court shall not have jurisdiction to confirm, vary, set aside or remit an award on an arbitration agreement except where so provided in this Act.”

In that context, the court reasoned that:

“In our view, having regard to the need for a broadly consistent approach to the interpretation of the Act and the Model Law, s 47 of the Act should be construed in a manner that is consistent with the intent underlying art 5 of the Model Law. Section 47 of the Act states that the court shall not have jurisdiction to interfere with an arbitral award except where so provided in the Act. The certainty which is sought to be achieved by this provision would be significantly undermined if the courts retained a concurrent ‘supervisory jurisdiction’ over arbitral proceedings or awards that could be exercised by the grant of declaratory orders not expressly provided for in the Act. In short, in situations expressly regulated by the Act, the courts should only intervene where so provided in the Act” Emphasis added.

57. Thus, it is reasonable to conclude that just like article 5, Section 10 of the Act was enacted, to ensure predictability and certainty of arbitration proceedings by specifically providing instances where a court may intervene. Therefore, parties who resort to arbitration, must know with certainty instances when the jurisdiction of the Courts may be invoked. According to the Act, such instances include, applications for setting aside an award, determination of the question of the appointment of an arbitrator and recognition and enforcement of arbitral awards amongst other specified grounds.

25. What the Applicant is seeking for this court to do is to make an order that can only be made by the arbitral tribunal. The court declines such an invitation as the same will be undermining the spirit of arbitration. The Applicant is not seeking that the court stops certain breach but directs performance of obligation, which may or may not be due.

26. Therefore I find and hold that the Applicant has not satisfied the conditions for the issuance of interim protection measures desired in the application. I decline to allow the prayer for directing the Respondent to avail access rights and data.

27. The dispute discloses a prima facie dispute. Whether the dispute is arbitrable is within the competence of the arbitrator to decide. This is in line with the concept of *Portside Freight Terminals Limited v Kenya Ports Authority* [2024] KEHC 6290 (KLR), where this court held as follows:

“The rest of the issues are in the realm of kompetenz - competence. It is the Arbitrator who will deal with the same. In the case of *Euromec International Limited v Shandong Taikai Power Engineering Company Limited* (Civil Case E527 of 2020) [2021] KEHC 93 (KLR) (Commercial and Tax) (21 September 2021) (Ruling), justice Mativo as then he was



stated as doth: -“The party’s intentions were clear. In any event, the question of whether there existed a dispute or not touched on the jurisdiction of the arbitrator. The arbitrator’s jurisdiction could be challenged by attacking the agreement’s validity or the tribunal’s jurisdiction over the subject matters, among other challenges. Section 17 of the Arbitration Act provided for the doctrine of kompetenz-kompetenz, a jurisprudential doctrine whereby a legal body, such as an arbitral tribunal, could have competence, or jurisdiction to rule as to the extent of its own competence on an issue before it. The doctrine of kompetenz-kompetenz was enshrined in the UNCITRAL Model Law on International Commercial Arbitration and Arbitration Rules. Article 16(1) of the Model Law and article 23(1) of the Arbitration Rules both dictated that the arbitral tribunal was to have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.”

18. This court has no jurisdiction to deal with the jurisdiction of the arbitrator before the arbitrator makes a decision on the issue. There is nothing that has been demonstrated to enable me grant the orders sought.
28. Having found that there exists a dispute capable of arbitration, and further noting the presence of an arbitration clause, this Court is duty-bound to facilitate the arbitral process. Although the Applicant sought to make the commencement of arbitration conditional upon the granting of prayer 2, the Court is of the considered view that the matter properly falls within the domain of the arbitrator. In the interest of justice, the Court retains the power to facilitate the arbitral process as envisaged under Article 159(2)(c) of the Constitution, which enjoins courts to promote alternative forms of dispute resolution including arbitration. This position was fortified in the case of Cubic Business Solutions v Spectre International Limited [2021] KEHC 9351 (KLR), where the Court emphasized that once parties have agreed to arbitration, the Court should respect and promote that mechanism. The court in that case stated as follows:

The statute expressly mandates the High Court to appoint the Arbitrator. In my considered opinion, the court has an inherent power to make such orders or to give such directions as may be necessary for the ends of justice.

29. In view of the nature of the application before me, I find it just and appropriate to issue directions for the appointment of an arbitrator so as to forestall the protracted pre-arbitration disputes which serves no useful purpose to either party. I note that Section 12(2), (3), (4) and (5) of the Arbitration Act empowers this court to intervene and appoint an arbitrator where the parties are unable to agree on the choice of an arbitrator or where either party declines to participate in the appointment process. The section provides in extenso as follows:
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators and any chairman and failing such agreement-
- (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators so appointed shall appoint the arbitrator;
- (b) in an arbitration with two arbitrators, each party shall appoint one arbitrator; and
- (c) in an arbitration with one arbitrator, the parties shall agree on the arbitrator to be appointed.
- (3) Unless the parties otherwise agree, where each of two parties to an arbitration agreement is to appoint an arbitrator and one party (“the party in default”)-



- (a) has indicated that he is unwilling to do so;
  - (b) fails to do so within the time allowed under the arbitration agreement; or
  - (c) fails to do so within fourteen days (where the arbitration agreement does not limit the time within which an arbitrator must be appointed by a party), the other party, having duly appointed an arbitrator, may give notice in writing to the party in default that he proposes to appoint his arbitrator to act as sole arbitrator.
- (4) If the party in default does not, within fourteen days after notice under subsection (3) has been given –
- (a) make the required appointment; and
  - (b) notify the other party that he has done so, the other party may appoint his arbitrator as sole arbitrator, and the award of that arbitrator shall be binding on both parties as if he had been so appointed by agreement.
- (5) Where a sole arbitrator has been appointed under subsection (4), the party in default may, upon notice to the other party, apply to the High Court within fourteen days to have the appointment set aside.
30. In the end, the application is partly allowed. The next question is costs. Though the respondent opposed the application, they did not file submissions. Further the award of costs is at the discretion of the court. The Court of Appeal in the case of *Farah Awad Gullet v CMC Motors Group Limited* [2018] KECA 158 (KLR) had this to say:

“It is our finding that the position in law is that costs are at the discretion of the court seized up of the matter with the usual caveat being that such discretion should be exercised judiciously meaning without caprice or whim and on sound reasoning secondly that a court can only withhold costs either partially or wholly from a successful party for good cause to be shown.”

31. The Supreme Court set forth guiding principles applicable in the exercise of that discretion in the case of *Jasbir Singh Rai & 3 others v Tarlochan Singh Rai & 4 others*, SC Petition No. 4 of 2012; [2014] eKLR, as follows: -

“18. It emerges that the award of costs would normally be guided by the principle that “costs follow the event”: the effect being that the party who calls forth the event by instituting suit, will bear the costs if the suit fails; but if this party shows legitimate occasion, by successful suit, then the defendant or respondent will bear the costs. However, the vital factor in setting the preference, is the judiciously-exercised discretion of the Court, accommodating the special circumstances of the case, while being guided by ends of justice. The claims of the public interest will be a relevant factor, in the exercise of such discretion, as will also be the motivations and conduct of the parties, prior-to, during, and subsequent-to the actual process of litigation.

22. Although there is eminent good sense in the basic rule of costs - that costs follow the event- it is not an invariable rule and, indeed, the ultimate factor on award or non-award of costs is the judicial discretion. It follows, therefore, that costs do not, in law, constitute an unchanging consequence of legal proceedings - a position well illustrated by the considered opinions of this



Court in other cases. The relevant question in this particular matter must be, whether or not the circumstances merit an award of costs to the Applicant.

32. The order that is appropriate for this application is for each party to bear their own costs.

### **Determination**

33. The upshot of the foregoing, is that I make orders as follows: -

- a. The application dated 3.4.2025 is partly allowed.
- b. The dispute between the parties be and is hereby referred to Arbitration as per Clause 14 of the Revenue Management System Contract dated 30.4.2018.
- c. The parties shall appoint a Sole Arbitrator within 30 days of this Order failing of which the Chairman of the Chartered Institute of Arbitrators (Kenya Branch), shall appoint the Arbitrator to conduct the arbitration.
- d. The prayer for interim relief for respondent to avail all access rights and data in the Revenue Management System as agreed by the parties under clause 8 of the Revenue Management System dated 30.4.2018 as communicated by the Applicant vide letter dated 24.3.2025, is premature and therefore declined.
- e. Each party bears its own costs.

**DELIVERED, DATED AND SIGNED AT NYERI ON THIS 18<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

Ruling delivered through Microsoft Teams Online Platform.

**KIZITO MAGARE**

**JUDGE**

Represented by:-

Silas, Evans & Stevens Advocates for the Applicant

Court Assistant – Michael

