



**Uruku Electricals Contractors Limited v Meru Wood Industries Ltd/Hitec Electrical Contractors Ltd Jv; Chairman, Chartered Institute of Arbitrators (Interested Party)  
(Miscellaneous Civil Case E112 of 2023) [2024] KEHC 1160 (KLR) (18 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 1160 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
MISCELLANEOUS CIVIL CASE E112 OF 2023  
TW CHERERE, J  
JANUARY 18, 2024**

**BETWEEN**

**URUKU ELECTRICALS CONTRACTORS LIMITED ..... APPLICANT**

**AND**

**MERU WOOD INDUSTRIES LTD/HITEC ELECTRICAL CONTRACTORS LTD JV ..... RESPONDENT**

**AND**

**CHAIRMAN, CHARTERED INSTITUTE OF ARBITRATORS .... INTERESTED PARTY**

**RULING**

1. By originating summons dated 02<sup>nd</sup> November, 2023, the Applicant seeks the following orders:
  1. That the Chairman of the Chartered Institute of Arbitrators be ordered and or directed to appoint an Arbitrator to hear and determine the dispute between the Applicant and the Respondent in respect of the Contract Agreement for provision of construction and extensions of LV single phase lines and service cables – Last Mile Connectivity Project II(LMCPII) in Meru County valued at KES. 847,710/- (Eight hundred forty-seven thousand, seven hundred ten)
  2. That the court gives such directions and or orders as may be necessary to effect the appointment of the Arbitrator
  3. That the costs be borne by the Respondent
2. The Application was based on the following grounds:



- i. That the Applicant and the Respondent, on 07<sup>th</sup> February, 2028 entered into a contract for provision of construction and extensions of LV single phase lines and service cables – Last Mile Connectivity Project II(LMCPII) in Meru County valued at KES. 847,710/- (Eight hundred forty-seven thousand, seven hundred ten)
  - ii. That Applicant carried out the contracted works but Respondent has refused to pay
  - iii. That clause 14 of the agreement provides for choice of forum of dispute resolution between the parties herein as arbitration
  - iv. That the contract does not expressly name the appointing authority of the Arbitrator
  - v. That Respondent has declined to agree to mutual appointment of the arbitrator
  - vi. That it is in the interest of justice that this application be allowed
3. The application is supported by an affidavit sworn on 02<sup>nd</sup> November, 2023 by Josephat Murithi Mbogori.
  4. According to the deponent, the parties herein, on 07<sup>th</sup> February, 2028, entered into a contract for provision of construction and extensions of LV single phase lines and service cables – Last Mile Connectivity Project II(LMCPII) in Meru County valued at KES. 847,710/- (Eight hundred forty-seven thousand, seven hundred ten).
  5. Consequently, the Applicant carried out the contracted works but Respondent has refused to pay. It was averred that clause 14 of the agreement provides for choice of forum of dispute resolution between the parties herein as arbitration but that the contract does not expressly name the appointing authority of the Arbitrator and Respondent has declined to agree to mutual appointment of the arbitrator.
  6. Based on the foregoing it was the Applicant's position that there is a dispute as to the non-payment of the contract sum which dispute ought to be referred to arbitration as per the terms of clause 14 of the said contract.
  7. Though served, Respondent did not file any response to the application and the application is therefore unopposed.

### **Determination**

8. I have considered the application in the light of the supporting affidavit and annexures thereto.
9. The first issue for determination is whether there exist an arbitration agreement. In support of the application the Applicant relies on the contract between the parties herein dated 07<sup>th</sup> February, 2018. That agreement contains an arbitration in clause 14 whereby any dispute arising out of the contract was to be referred to arbitration.
10. The second issue is whether the orders sought are merited. Whereas the contract between the parties provides for resolution of disputes by arbitration, it fails to expressly name the appointing authority of the Arbitrator.
11. There being evidence that the parties have been unable to agree on the manner of appointment and identity of the arbitrator, I find that it would be in the interest of justice that the orders sought be granted.
12. It is therefore hereby ordered:



1. That the Chairman of the Chartered Institute of Arbitrators appoints an Arbitrator to hear and determine the dispute between the Applicant and the Respondent in respect of the Contract Agreement for provision of construction and extensions of LV single phase lines and service cables – Last Mile Connectivity Project II(LMCPII) in Meru County valued at KES. 847,710/- (Eight hundred forty-seven thousand, seven hundred ten)
2. The appointment shall be made not later than 14 days upon receipt by the Chairman or his representative of all necessary documents that will of necessity assist the arbitrator in determining the dispute between the parties herein
3. Both parties shall bear the costs of the arbitration
4. These orders shall be served on the Respondent and the Interested Party for compliance
5. Costs of this application shall be in the cause

**DELIVERED IN MERU THIS 18<sup>TH</sup> DAY OF JANUARY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

**Appearances**

Court Assistants - Kinoti/Munene

For Applicant - Ms. Kinyanjui for Mbaabu M'Inoti & Co. Advocates

For Respondent - N/A

For Interested Party - N/A

