



**Multichoice Kenya Limited v Events & Functions Limited (Civil Appeal  
E170 of 2023) [2024] KEHC 770 (KLR) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 770 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CIVIL APPEAL E170 OF 2023  
RE ABURILI, J  
FEBRUARY 1, 2024**

**BETWEEN**

**MULTICHOICE KENYA LIMITED ..... APPELLANT**

**AND**

**EVENTS & FUNCTIONS LIMITED ..... RESPONDENT**

**RULING**

1. The parties counsel have asked the court to record that “By consent, the appeal herein is allowed.”
2. On costs of the appeal, I observe that the issue for determination is a jurisdictional one in that the Appellant raised a Preliminary Objection to the suit on account of an arbitration clause in the Agency Agreement between the parties hereto, which issue the trial court should have considered and settled it.
3. Article 159 of *the Constitution* provides for the promotion of alternative forms of dispute resolution and arbitration is one of them.
4. Albeit the Respondent insisted on jurisdiction of the court, the court ought to have taken judicial notice of the issue of jurisdiction and stayed the suit.
5. It is not in every case that a party must be blamed as the court has a role to play in guiding parties on jurisdiction.
6. That said, I find that the Respondent having conceded to this appeal, appreciated the place of jurisdiction of courts. It should not be penalized for conceding to the appeal which could have been avoided had the trial court appreciated that jurisdiction is everything without which a court of law acts in vain.
7. Accordingly, I find that this appeal as conceded to and is allowed with an order that each party bear their own costs of the appeal and that the suit before the lower court being Kisumu CMCC No. E187



of 2023 is hereby stayed pending referral of the dispute between the parties thereto to arbitration as per the Arbitration Clause in their Agency Agreement dated 2<sup>nd</sup> February 2020.

8. This file is hereby closed.
9. Lower court file be returned.
10. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2024.**

**R.E. ABURILI**

**JUDGE**

