



**Kenya National Examination Council (KNEC) v Ongata Works Limited; Q. S. Mutinda Mutuku (Interested Party) (Commercial Arbitration Cause E091 of 2023) [2024] KEHC 9006 (KLR) (Commercial and Tax) (22 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9006 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL ARBITRATION CAUSE E091 OF 2023**

**AA VISRAM, J**

**JULY 22, 2024**

**BETWEEN**

**KENYA NATIONAL EXAMINATION COUNCIL (KNEC) ..... APPLICANT**

**AND**

**ONGATA WORKS LIMITED ..... RESPONDENT**

**AND**

**Q. S. MUTINDA MUTUKU ..... INTERESTED PARTY**

**RULING**

1. I have considered the application dated 5<sup>th</sup> December, 2023, together with the supporting affidavit sworn on even date; the grounds of opposition dated 15<sup>th</sup> January, 2024; the rival submissions made by the parties; and the applicable law.
2. The Applicant is seeking, inter-alia, a stay of arbitral proceedings pending hearing and determination of the present application; and is further challenging the arbitrator's jurisdiction to hear the dispute pursuant to Section 17 of the Arbitration Act.
3. In support of the application, the Applicant submitted that the factual basis as put forward by the Applicant is uncontroverted because no replying affidavit has been filed in opposition to the same.
4. The Applicant relied on Article 50 of the Constitution and submitted that every party ought to have access to a court of law to resolve a dispute. Further, that Article 165 of the Constitution similarly gives this court supervisory powers to grant the orders sought by the Applicant.



5. The Applicant submitted that if the orders sought are not granted, it would incur costs, and the same would be wasted. This would be an improper use of public resources given that the Applicant is a public entity.

6. Having considered the above, I note that the relevant law is found at section 17 of the Act. In particular, sections 17(2), (6) and (8) of the Act are instructive. The same provide as follows:-

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(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence, however, a party is not precluded from raising such a plea because he has appointed, or participated in the appointment of, an arbitrator.

...

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(6) Where the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party aggrieved by such ruling may apply to the High Court, within 30 days after having received notice of that ruling, to decide the matter.

...

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(8) While an application under subsection (6) is pending before the High Court the parties may commence, continue and conclude arbitral proceedings, but no award in such proceedings shall take effect until the application is decided and such award shall be void if the application is successful.

7. Section 10 of the Arbitration Act reads as follows in relation to the powers of this court to supervise and assist the arbitral proceedings:-

10. Extent of court intervention

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

8. Accordingly, I am of the view that this court has no power to either freeze the timelines, as prayed for by the Applicant, or to deem, that timelines have been complied with, when they simply have not.

9. To my mind, while the Constitution gives parties the right to access a court of law, the said Article was not intended to override situations where the parties have expressly agreed to resolve their dispute by way of arbitration.

10. Given the special nature of arbitration proceedings, and in particular, the fact that parties chose, voluntarily, to resolve the dispute by way of arbitration, interference by the court in arbitral matters is strictly limited; and may only be carried out in accordance with the express provisions of the Act as stated above. The effect of this statement is that the timelines set out in the Arbitration Act are inflexible and inextensible.

11. The Applicant ought to have challenged the jurisdiction of the tribunal within 30 days from the time it was informed that the ruling was ready for publication, namely, from 31<sup>st</sup> October, 2023. The present application is dated 5<sup>th</sup> December, 2023. Its failure to challenge the award within the said period as set out in the Act was fatal.



12. Having held the above, I am not inclined to either extend time as prayed for the by the Applicant, or to stay the proceedings of the tribunal. There would be no valid grounds to do so based on the present facts.

13. The application is accordingly dismissed with costs.

**DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 22<sup>ND</sup> DAY OF JULY 2024**

**ALEEM VISRAM, FCIArb**

**JUDGE**

In the presence of;

..... for the Applicant

..... for the Respondent

..... for the Interested Party

