



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wuor v Beatpar Enterprises Limited (Commercial Case E501 of 2022)  
[2023] KEHC 3247 (KLR) (Commercial and Tax) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3247 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL CASE E501 OF 2022  
DAS MAJANJA, J  
APRIL 20, 2023**

**BETWEEN**

**BAPINY MONTUEL WEJANG WUOR ..... PLAINTIFF**

**AND**

**BEATPAR ENTERPRISES LIMITED ..... DEFENDANT**

**RULING**

1. The Plaintiff has filed the Originating Summons dated December 5, 2022 (“the Summons”) invoking section 17(6) of the *Arbitration Act* seeking determination of the question, “whether the sole arbitrator has jurisdiction to deal with the claim before it on account of the arbitration clause in the agreement dated September 18, 2015.”
2. The Summons is supported by the Plaintiff’s affidavit and supplementary affidavit sworn on December 5, 2022 and February 10, 2023 respectively. It is opposed by the Defendant through the Notice of Preliminary Objection dated December 20, 2022 and the replying affidavit of its director David Muriithi sworn on the same date. The application was canvassed by written submissions.
3. The facts upon which the application is grounded are not disputed and are as follows. The Plaintiff contracted the Defendant to do construction on its property, LR No 12882/28. In that regard, the parties entered into an Agreement dated September 18, 2015 which contained an arbitration clause. The parties subsequently entered into two Deeds of Variation dated December 21, 2015 and February 8, 2016 respectively and Settlement Agreement dated December 3, 2016.
4. Following a dispute between the parties, the President of the Law Society of Kenya appointed Mr George Esuchi to be the sole arbitrator (“the Arbitrator”) in accordance with clause of the 16 of the Agreement dated September 18, 2015. The Plaintiff objected to the jurisdiction of the arbitral tribunal by the notice dated August 5, 2022. The tenor of the objection was that the Agreement



dated September 18, 2015 was superseded by the subsequent agreements which did not contain an arbitration clause hence the arbitrator lacked jurisdiction to determine the matter in view of the Settlement Agreement which resolved the matter and did not have a dispute resolution clause.

5. The Arbitrator heard the objection and issued a ruling dated October 14, 2022 dismissing the objection. It is this decision that forms that basis of the Summons filed under section 17(6) of the *Arbitration Act*. The Plaintiff reiterates before this court that the arbitrator did not have jurisdiction on the ground that there was no basis for arbitration as the succeeding agreements superseded the initial agreement.
6. In response to the Summons, the Defendant, in the Notice of Preliminary Objection states that the application is time barred under section 17(6) of the *Arbitration Act*. It urges that the application does not comply with Rule 3 of the *Arbitrator Rules, 1997* and adds that the Plaintiff is guilty of delay as the parties have subsequently appeared before the Arbitrator and fixed the matter for hearing. On the substance, the Defendant supports the decision of the Arbitrator and avers that the four agreements must be read together with one cross referencing the preceding one hence the arbitration clause contained in the first agreement applies to all the subsequent agreements.
7. In order for the court to address the substance of the Summons, the Plaintiff must surmount the time threshold within which party dissatisfied with the ruling on jurisdiction may move the court. Section 17(6) provides, “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”.
8. This provision is self-explanatory and does not need any elaboration or elucidation. An aggrieved party must file the application within 30 days of receipt of the ruling. It is not in dispute that the ruling was delivered on October 14, 2022. This Summons was filed on December 14, 2022. In terms of section 17(6), the application ought to have been filed on October 14, 2022 latest. It is therefore out of time.
9. The application is therefore incompetent. It is therefore struck out with costs to the Defendant. The costs are assessed at Kshs 70,000.00 only.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF APRIL 2023.**

**D. S. MAJANJA**

**JUDGE**

Court Assistant: Mr M. Onyango

Mr C. Joseph instructed by Carrey Joseph Advocates for the Plaintiff.

Mr R. Githaiga instructed by Robert Githaiga and Company Advocates for the Defendant.

