



**Beamland Agencies Ltd v Stima Investment Co-operative Society Ltd (Civil Case E002 of 2021) [2023] KEHC 27300 (KLR) (17 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 27300 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAJIADO  
CIVIL CASE E002 OF 2021  
SN MUTUKU, J  
OCTOBER 17, 2023**

**BETWEEN**

**BEAMLAND AGENCIES LTD ..... PLAINTIFF**

**AND**

**STIMA INVESTMENT CO-OPERATIVE SOCIETY LTD ..... DEFENDANT**

**RULING**

1. Stima Investment Co-operative Ltd, the defendant herein, has filed Chamber Summons dated 25<sup>th</sup> January 2022 seeking the following orders:
  - i. That there be stay of all proceedings herein pending arbitration.
  - ii. That the dispute between the Plaintiff/Respondent and the Defendant/Applicant be referred to arbitration.
  - iii. That the costs of this application be awarded to the Defendant/Applicant against the Plaintiff/Respondent.
2. The grounds in support of the application are found in the face of it and in the supporting affidavit sworn by Viola Odhiambo on 25<sup>th</sup> January 2022, the gist of which is that the parties herein entered into a surveying and consultancy agreement dated 19<sup>th</sup> May 2016. Clause 12 of that agreement stipulates that in case of a dispute between the parties, the same shall be referred to arbitration. The Applicant now wishes to invoke that clause in respect to this dispute.
3. The Applicant states that the Plaintiff has disregarded that clause and moved to court to file this suit on 19<sup>th</sup> November 2021 without informing the court as to whether attempts have been made to resolve the matter amicably through arbitration.
4. Through the directions of this court, parties were directed to file submissions in respect of the Chamber Summons. The Applicant has filed his submissions dated 16<sup>th</sup> September 2022 in which it is reiterated



that the parties herein entered into an agreement for surveying consultancy on the 19<sup>th</sup> May 2016 in which there is a clause to the effect that disputes between the parties would be settled through arbitration and that the clause binds both parties.

5. The Applicant has invoked Section 6 of the [Arbitration Act](#), Cap. 49 Laws of Kenya which provides that:
  1. A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or otherwise acknowledges the claim against which the stay of proceedings is sought, stay the proceedings and refer the parties to arbitration unless it finds-
    - a. That the arbitration agreement is null and void, inoperative or incapable of being performed; or
    - b. That there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.
  2. Proceedings before the court shall not be continued after an application under subsection (1) has been made and the matter remains undetermined.
  3. If the court declines to stay legal proceedings, any provision of the arbitration agreement to the effect that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.
6. The Applicant cited [Scales and Software Limited v. Web Commercial Systems Limited & another](#) (2021) eKLR where the court upheld section 6 of the [Arbitration Act](#) to the effect that the court will ordinarily stay an action if the pre-conditions for grant of stay are met by the Defendant. It was submitted that the Defendant approached the court seeking stay when it entered appearance; that it is not in dispute that the agreement between the parties is valid and it contains an arbitration clause and that a dispute has arisen between the parties regarding a breach of the agreement.
7. It was further submitted that the [Constitution](#) recognizes alternative dispute resolution mechanisms; that the Applicant herein is obligated under section 6(1) of the [Arbitration Act](#) to apply to court 'not later than the time of entering appearance' and therefore this court is obligated to stay proceedings in this matter and refer the parties to arbitration.
8. I have noted that the Plaintiff came to this court by way of a Plaint dated 19<sup>th</sup> April 2021 claiming breach of contract by the Defendant. One of the documents the Plaintiff has annexed to the Plaint is an Agreement dated 19<sup>th</sup> May 2016. Clause 12 of that Agreement states as follows:

Any dispute between the parties in respect of any matter concerning this Agreement or the contract which cannot be resolved amicably shall be referred to Arbitration by a person to be agreed between the parties, or failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, a person to be nominated at the request of either party by the Chairman for the time being of the Law Society of Kenya.
9. The court record shows that on 6<sup>th</sup> July 2022, Mr. Kimani, learned counsel, attended court on behalf of the Plaintiff and Mr. Isinta, learned counsel, attended court on behalf of the Defendant. Mr. Kimani informed the court that the Application by the Defendant was opposed by the Plaintiff through their Replying Affidavit. He further asked the court to hold the application by the Defendant in abeyance for 45 days as parties pursue appointment of a mediator for settlement of the matter. This was not



opposed by Mr. Isinta. Mr. Kimani or anyone holding his brief did not attend court as the court record shows that only the Defendant was represented in the following court attendances.

10. I have perused the court file and I do not see the Replying Affidavit Mr. Kimani referred the court to. The Plaintiff has also not filed written submissions. The court allowed parties 45 days to refer this matter to arbitration and file a report failing which parties to file submissions. The Defendant is the only party that has filed the submissions.
11. I have considered this matter. I note that there is no dispute that parties herein entered into an Agreement for Surveying and Consultancy Services dated 19<sup>th</sup> May 2016. This fact is acknowledged by both the Plaintiff and the Defendant. They both have annexed to their court documents the said agreement. That agreement contains Clause 12 whose contents I have reproduced in this ruling, which clause is clear in its terms that any dispute between the parties regarding the agreement between them ought to be referred to arbitration.
12. I am guided by the authorities relied on by the Defendant, being Nakuru Civil Appeal No. 75 of 2017 *Adrec Limited v. Nation Media Group Limited* (2017) eKLR and Nairobi Civil Case No. E532 of 2020, *Scales and Software Limited v. Web Commercial Systems Limited & another* [2021] eKLR. In Adrec Limited case, the Court of Appeal stated, stated in part, as follows:

“.....Once a defendant, in a suit founded on contract containing an arbitral clause, enters appearance or causes a notice of appointment of advocates to be filed on its behalf and prior thereto or contemporaneously with such of the notice of appointment or entering of appearance files an application for stay of proceedings, the court is statutorily obligated to stay the proceedings and to refer the parties to arbitration as referred to in (a) and (b) of Section 6 (1) of the *Arbitration Act*. It should be emphasized that the right to seek and obtain stay of proceedings under section 6(1) of the *Arbitration Act* is lost the moment a defence is filed in the proceedings. By dint of the defence, the party filing it subjects itself to jurisdiction of the court and cannot thereafter resile from that position.”
13. I am satisfied that the Defendant fulfils all the requirement for seeking stay of proceedings by virtue of the arbitration clause in the agreement between the parties herein.
14. Consequently, I find the Chamber Summons dated 25<sup>th</sup> January 2022 properly before this court. I have found no opposition to it and therefore I hereby allow the same. This matter is referred to arbitration before an arbitrator agreed upon by the parties in line with Clause 12 of the Agreement dated 19<sup>th</sup> May 2016.
15. For the above purpose, parties are allowed 90 days to comply with this order. They shall return to court for further directions on 17<sup>th</sup> January 2024, when this matter shall be mentioned. It is so ordered.

**DATED, SIGNED AND DELIVERED THIS 17<sup>TH</sup> OCTOBER 2023.**

**S. N. MUTUKU**

**JUDGE**

