



Remix Limited v Lae Technologies Hong Kong Limited; Remix Capital Limited & 12 others (Interested Parties) (Commercial Case E093 of 2023) [2024] KEHC 11931 (KLR) (Commercial and Tax) (1 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11931 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E093 OF 2023
AA VISRAM, J
OCTOBER 1, 2024**

BETWEEN

REMIX LIMITED APPLICANT

AND

LAE TECHNOLOGIES HONG KONG LIMITED RESPONDENT

AND

REMIX CAPITAL LIMITED INTERESTED PARTY

PUMCELLS LIMITED INTERESTED PARTY

OIT AFRICA LIMITED INTERESTED PARTY

FLUTTERWAVE PAYMENT TECHNOLOGIES LIMITED INTERESTED PARTY

MULTIGATE LIMITED INTERESTED PARTY

REMIX INVESTMENT LIMITED INTERESTED PARTY

AVALON OFFSHORE LOGISTICS LIMITED INTERESTED PARTY

KANDON TECHNOLOGIES LIMITED INTERESTED PARTY

EQUITY BANK LIMITED INTERESTED PARTY

UNITED BANK OF AFRICA INTERESTED PARTY

GUARANTEE TRUST BANK (KENYA) LIMITED INTERESTED PARTY

ECOBANK KENYA LIMITED INTERESTED PARTY

BINANCE KENYA LIMITED INTERESTED PARTY



RULING

1. I have considered the Notice of Preliminary Objection dated 18th April, 2023; the submissions in support and in opposition to the same; and the applicable law.
2. The basis of the objection is that this court has no jurisdiction to deal with the present matter, for the reason that the agreement between the parties in relation to the subject matter in dispute contains an exclusive jurisdiction clause.
3. It was not in dispute that the relevant agreement between the Plaintiff and the Defendant is dated 17th October, 2020, and that the same confers the courts in Hong Kong with jurisdiction to entertain any dispute that may arise in relation to the agreement.

Clause 30 of the said agreement stipulates as follows:-

“This agreement and any dispute or claim arising out of or in connection with it is subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Hong Kong.”

4. In addition, Clause 31 of the agreement states as follows:-

“Each Party irrevocably agrees that the courts of Hong Kong shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non- contractual disputes or claim.”

5. Based on my reading of the above clauses, it is evident that both parties intended to have their disputes arising under the said agreement to be resolved under the laws of Hong Kong, and reserved exclusive jurisdiction to the same court.
6. The Plaintiff has not disputed the validity of the said clause, or impugned the validity of the quoted agreement. On the contrary, at clause 27 of the Plaint dated 7 March, 2023, the Plaintiff admitted and confirmed the exclusive jurisdiction clause, and admitted that the Plaintiff has instituted proceedings in Hong Kong pursuant to the said clause. Based on the submission of the parties, there are two cases presently ongoing in Hong Kong, and neither have been concluded.
7. The Respondent submitted that the primary issue before the court arising from the Plaint is the grant of a Mareva injunction seeking to freeze certain bank accounts. He clarified that the freezing orders arise out of the dispute between the parties under litigation in Hong Kong. His view was that the present proceedings still ought not be barred because admitting the same would aid discovery, and protect the efficacy of the ongoing proceedings in Hong Kong.
8. Counsel contended that a Mareva injunction is a common law remedy, and that the grant of the same is discretionary, and therefore, the same may still be awarded in the present circumstances. He pointed out that this favourable view had been adopted by the courts in the United States of America, and the same relief sought by the Plaintiff had been granted by the court in America.
9. Respectfully, this court is not aware of the precise issues that were before the American courts; and in any event, I do not think that a common law remedy ought to override the contractual agreement between the parties.



10. Moreover, I am not persuaded by reasons put forward by Counsel explaining why the orders may not be sought in the jurisdiction where the proceedings are ongoing, and then, thereafter, be recognized and enforced in accordance with the appropriate laws in Kenya concerning recognition and enforcement of foreign orders and judgments.
11. I am of the view that this court ought not re-write the contract between the parties, and in doing so, confer upon itself jurisdiction. Parties are bound by the terms of their contract's, and in the absence of evidence of coercion, fraud, or undue influence, there is no basis for this court to interfere with the same. The said elements have not been pleaded, and there is no reason for this court to consider if the same arise.
12. As regards the question of jurisdiction; based on the above, the facts appear to be uncontested. I therefore turn to the applicable law. The test is set out in the case of Mukisa Biscuit Manufacturing Co. Ltd -vs- West End Distributors Ltd (1969) EA 696, where the court held as follows:-

“so far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of the pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
13. Further, the court stated that a valid Preliminary Objection must first, raise a point of law based on ascertained facts and not on evidence:-

“In the words of Sir Charles Newbold P, at page 701,
...A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.” (emphasis mine)
14. Guided by the above, I am of the view that the test has been met. The facts relating to the question of jurisdiction, are to my mind, clear and uncontested. Therefore, I do not see any compelling reason why this court ought to depart from the contractual agreement of the parties. This is in line with the decision of the court in Pyrotechinc Company Limited -vs- Maersk Kenya Limited (2012) 11. eKLR where the court stated the following:-

“The underlying position is that the exclusive jurisdiction clause should normally be respected because the parties themselves freely fixed the settlement of their disputes the Court should carry out the intention of the parties and enforce an agreement made by them in accordance with the principle that a contractual undertaking should be honoured unless there is a strong reason for not keeping them bound by their agreement.”
15. Based on the reasons set out above, the Preliminary Objection is upheld. The Plaintiff is accordingly struck out with costs.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 1ST DAY OF OCTOBER 2024

ALEEM VISRAM, FCIArb

JUDGE



In the presence of;

-For the Applicant/Defendant
- For the Plaintiff
- For the 1st Interested Party
-For the 2nd Interested Party
-For the 3rd Interested Party
- For the 4th Interested Party
- For the 5th Interested Party
- For the 6th Interested Party
- For the 7th Interested Party
- For the 8th Interested Party
- For the 9th Interested Party
- For the 10th Interested Party
- For the 11th Interested Party
- For the 12th Interested Party
- For the 13th Interested Party

