



**Beatper Enterprises Limited v Wour (Miscellaneous Civil Application 546 of 2016)
[2021] KEHC 157 (KLR) (Commercial and Tax) (14 October 2021) (Ruling)**

Neutral citation: [2021] KEHC 157 (KLR)

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

MISCELLANEOUS CIVIL APPLICATION 546 OF 2016

F TUIYOTT, J

OCTOBER 14, 2021

BETWEEN

BEATPER ENTERPRISES LIMITED PLAINTIFF

AND

BAPINY MONTUEL WEJANG WOUR DEFENDANT

RULING

1. The purpose of these proceedings is revealed in ground (4) of the Notice of Motion dated 24th November 2016. It reads:-

“THAT the Agreement between the parties has an Arbitration clause and the Applicant therefore seeks from this Honourable Court interim measures of protection under section 7(1) of the Act, pending the appointment of an Arbitrator.”

2. Section 7(1) of the *Arbitration Act* (the Act) reads:-

“It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.”

3. On how to trigger the request for an interim measure of protection, Rule 2 of the *Arbitration Rules, 1997* reads:-

“Applications under section 6 and 7 of the Act shall be made by summons in the suit.”



4. The Rule envisages the filing of a suit, something not done in the present matter and which must now come to haunt the Applicant's application of 21st January 2021 which is for the following substantive order:-

“(3) THAT The Settlement Agreement between the Applicant and the Respondent herein dated 3rd December, 2016 be and is hereby recorded as a Consent Order in this matter and Judgment be entered in accordance therewith.”

5. There is no substantive suit before Court and the order sought is not available in these proceedings. The Applicant invokes order 25 Rule 5 of the *Civil Procedure Rules* which reads:-

“Compromise of a suit [Order 25, rule 5.]

1. Where it is proved to the satisfaction of the court, and the court after hearing the parties directs, that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith.
2. The Court, on the application of any party, may make any further order necessary for the implementation and execution of the terms of the decree.”

6. Although a suit, under section 2 of the *Civil Procedure Act*, means all civil proceedings commenced in any manner prescribed, the proceedings before Court were limited to seeking of protective orders pending the reference of the dispute between the parties to Arbitration. There are no substantive proceedings upon which an order for compromise of the dispute between the parties can be anchored.

7. I need not consider the other objections to the application of 21st January 2021. It fails with costs to the Respondent.

Dated and Signed this 29th Day of September 2021

F. TUIYOTT

JUDGE

Dated and Delivered at Nairobi this 14th Day of October 2021

A. MABEYA, FCI Arb

JUDGE

PRESENT:

