



**Tropical Technology Limited v Principal Secretary, State Department
of Correctional Services & another (Civil Case E321 of 2020)
[2021] KEHC 147 (KLR) (Commercial and Tax) (7 October 2021) (Ruling)**

Neutral citation: [2021] KEHC 147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E321 OF 2020
F TUIYOTT, J
OCTOBER 7, 2021**

BETWEEN

TROPICAL TECHNOLOGY LIMITED APPLICANT

AND

**PRINCIPAL SECRETARY, STATE DEPARTMENT OF CORRECTIONAL
SERVICES 1ST RESPONDENT**

ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. The Application before Court has to be a curious one. By a Complaint dated 28th August 2020 Tropical Technology Limited (Tropical or the Applicant) brings this action against the two Defendants seeking multiple prayers. In Paragraph 21 of the Complaint, Tropical urges the jurisdiction of this Court.

“[21] This cause of action arose in Nairobi within the jurisdiction of this Honourable Court.”

2. In a Defence filed by the 2nd Defendant (the Attorney General) for both himself and the 1st Defendant, the Defendants accede to the jurisdiction of the Honourable Court.
3. It is therefore a strange twist that through an application dated 26th November 2020, Tropical invokes the provisions of section 6 of the *Arbitration Act*, 1995 seeking for reference of this matter to a sole Arbitrator for hearing and final determination. Cited by Tropical is an Arbitrator Agreement in the contract between it and the 1st Defendant.



4. Section 6 of the *Arbitration Act* reads:-

“Stay of legal proceedings

- (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.”

5. A close reading of words of these statutory provision makes it clear that they are available only to the party that “enters appearance or otherwise acknowledges the claim.” This, surely, can never be the Plaintiff. Unless, of course where a plaintiff acknowledges a counterclaim. A Plaintiff who, on his own volition, overlooks an Arbitration Agreement and files a substantive suit before Court should not be permitted to employ the provisions of section 6 of the *Arbitration Act* to force a Defendant to submit to the terms of agreement.

6. The most the Plaintiff can do, having brought itself to these circumstances, is to persuade the Defendant to go to Arbitration. The Chamber Summons dated 26th November 2020 is without merit and is dismissed with costs.

DATED AND SIGNED THIS 29TH DAY OF SEPTEMBER 2021

F. TUIYOTT

JUDGE

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF OCTOBER 2021

A. MABEYA, FCI Arb

JUDGE

