



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 41 OF 2016

JAMWA CONSOLIDATED AGENCIES (K) LIMITED.....PLAINTIFF

UAP INSURANCE COMPANY LIMITED.....DEFENDANT

RULING

1. The defendant has asked the court to stay the proceedings in this case, so that the dispute between the parties can be resolved through arbitration.
2. In the alternative, the defendants ask the court to strike out the suit pending arbitration.
3. It is the defendant's case that the Policy of Insurance which forms the substratum of the suit, contains an Arbitration Clause. Therefore, by filing suit in court, before the parties had given arbitration an opportunity to resolve the disputes between them, the plaintiff is said to have acted prematurely and improperly.
4. The defendant submitted that pursuant to Section 6 (1) of the Arbitration Act, when there was an arbitration clause in a contract, the court was obliged to stay any court proceedings unless the agreement was null and void, or if the matters in dispute within the court case were not related.
5. There is no doubt that the defendant's understanding of Section 6 (1) of the Arbitration Act is accurate, as it is derived expressly from the wording of that section.
6. At this point, I find it useful to set out herein the provisions of the said Section 6 (1), which is in the following terms;

“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 the 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?.**

7. The substantive answer from the plaintiff is that the policy of Insurance which allegedly contains the arbitration agreement was not executed by the parties to this suit.

8. On the one hand, the parties are in agreement that there is a contract between them, but on the other hand there is no consensus between them as to the actual document which constitutes the contract.

9. The defendant has produced a document marked "A?", which is named "*Goods in Transit Policy Document?*".

10. Nowhere in that document does the plaintiff's name appear. Secondly, the document is neither dated nor signed by the parties to this suit.

11. Thirdly, the document appears to be incomplete, as it makes reference to a Schedule, but no such schedule is exhibited.

12. Meanwhile, the plaintiff exhibited documents relating to the Original Policy **No. 020/0621/1/003663/2011** and Policy renewal **No. 020/062/3/001533/2013**.

13. Notwithstanding the fact that the plaintiff disowned the document which the defendant exhibited, the defendant did not make any attempts to persuade the court that the said document was the embodiment of the contract between the parties.

14. A comparison between the 2 sets of documents leads me to conclude, on a *prima facie* basis, that the unsigned and undated document which the defendant produced in evidence is probably not the contract document. I have arrived at that conclusion, *inter alia* because the defendant did not challenge the authenticity of the documents produced by the plaintiff.

15. In the final analysis, as the court has not been persuaded that the document containing the arbitration clause was the contract document, I cannot use it as a basis for either ordering the stay of proceedings or of referring this case to arbitration.

16. Accordingly, the application dated 22nd April 2016 is dismissed with costs to the plaintiff.

DATED, SIGNED and DELIVERED at NAIROBI this 17th day of January 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

No appearance for the Plaintiff

Chengecha for the Defendant

Collins Odhiambo – Court clerk