



Pepeta Holdings Limited v Good To Great Solutions Limited (Miscellaneous Application E801 of 2024) [2025] KEHC 13366 (KLR) (Commercial and Tax) (26 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13366 (KLR)

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

MISCELLANEOUS APPLICATION E801 OF 2024

FG MUGAMBI, J

SEPTEMBER 26, 2025

BETWEEN

PEPETA HOLDINGS LIMITED APPLICANT

AND

GOOD TO GREAT SOLUTIONS LIMITED RESPONDENT

RULING

Introduction and Background

1. This Ruling determines the application dated 26th September 2024 brought under Order 40 Rules 1, 2, and 3 of the Civil Procedure Rules and Section 7 of the *Arbitration Act*. The applicant seeks injunctive relief to restrain the respondent from interfering with its CT Scan services at Mbagathi County Hospital. The orders sought are two-fold: first, to preserve the applicant's operations pending the hearing and determination of the application and secondly, to maintain the status quo pending the conclusion of arbitration proceedings between the parties.
2. The application further prays that the dispute between the parties, which arises from a Sale Agreement dated 19th December 2023 for the purchase of a Siemens SOMATOM Definition AS 64 Slice CT Scanner, be referred to arbitration in accordance with Clause 13 of the Agreement.
3. The applicant contends that notwithstanding the existence of this arbitration clause, the respondent issued a termination letter dated 20th September 2024 alleging default in payment and directing the applicant to cease providing CT Scan services by 27th September 2024. It is argued that such termination is unlawful and premature since the dispute ought to be resolved through arbitration.
4. The respondent opposed the motion by way of a preliminary objection, contending that the application is incompetent. It is urged that the Court lacks jurisdiction to entertain the dispute as the



parties reserved the right to refer disagreements to arbitration. It is further argued that the Court cannot grant injunctive relief on the basis of a miscellaneous application, since interlocutory orders cannot issue in a vacuum absent a substantive suit.

5. The respondent also raises several additional grounds, including the nature of the dispute as a liquidated claim, the propriety of the supporting affidavit sworn by counsel, alleged conflict of interest, material non-disclosure, and lack of authority to institute proceedings on behalf of the applicant company.

Analysis and Determination

6. Before considering the merits of these objections, it is necessary to restate the legal framework on what constitutes a proper preliminary objection. In *Mukisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd*, [1969] EA 696, Law JA stated that a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.

7. Similarly, Sir Charles Newbold, P observed that a preliminary objection:

“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.”

8. Guided by this principle, only two grounds raised by the respondent qualify as pure points of law:

- a. whether injunctive relief can issue in the absence of a substantive suit, and
- b. whether the application filed as a miscellaneous cause is competent.

9. That said, it is not disputed that the instant application was filed as a miscellaneous application, without a plaint, originating summons or petition. Order 3 Rule 1 of the Civil Procedure Rules is categorical that:

“Every suit shall be instituted by presenting a plaint to the Court, or in such other manner as may be prescribed.”

10. The jurisprudence on this point is settled. In *Cresta Investments Ltd V Gulf African Bank Ltd & Another*, [2020] KEHC 993 (KLR), Majanja J stated that:

“An application for injunction under Order 40 of the Civil Procedure Rules is predicated on a suit filed by the party seeking the injunction. An injunction without a substantive claim is a plea in vain and cannot lie in law or at all.”

11. The same position was affirmed in *Mbugua & Another V Mbugua & 4 Others*, [2024] KEHC 2403 (KLR), where the Court held that an injunction can only be issued where there is a substantive suit in place, otherwise it will be in vain. And in *Proto Energy Limited V Hashi Energy Limited*, [2019] KEHC 12311 (KLR), the Court emphasized that a Notice of Motion is not legally recognized as an originating process and can only be filed within a properly instituted suit.

12. These authorities leave no doubt that injunctive relief cannot be granted in a vacuum. The jurisdiction of the Court is only triggered by the existence of a substantive suit.



13. The applicant has equally invoked Section 7 of the *Arbitration Act*, which empowers the Court to grant interim measures of protection “before or during arbitral proceedings.” However, the Arbitration Rules, 1997 provide at Rule 2 that:

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

14. This procedure presupposes either an existing suit or arbitral proceedings. Such jurisdiction is not exercised in the abstract but must be anchored in properly instituted proceedings. The present application, having been commenced as a miscellaneous cause, falls short of this requirement.
15. Moreover, even if the matter were properly before this Court, the prayer for reference to arbitration would still fail. By actively submitting their dispute before this Court and canvassing it through substantive applications, both parties have elected to litigate rather than arbitrate. In doing so, they have waived their right to rely on the arbitration clause. It is a settled principle that a party who voluntarily and consistently participates in litigation cannot thereafter seek to oust the Court’s jurisdiction by invoking an arbitration agreement.

Disposition

16. To the extent that the applicant seeks injunctive relief through a miscellaneous application without a substantive suit, the same is procedurally incompetent and fatally defective. The preliminary objection thus succeeds on this point alone.
17. Accordingly, the application dated 26th September 2024 is hereby struck out with costs to the respondent. For the avoidance of doubt, all subsequent proceedings founded upon the said application, including any interlocutory steps taken pursuant thereto, are equally rendered incompetent and are hereby set aside.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER 2025.

F. MUGAMBI

JUDGE

