



**Ceer Processing Limited v Principal Secretary, State Department for Blue Economy & Fisheries,
Ministry of Mining , Blue Economy and Maritime Affairs & 2 others (Commercial Case
E168 of 2024) [2025] KEHC 14651 (KLR) (Commercial and Tax) (16 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14651 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
COMMERCIAL CASE E168 OF 2024
AA VISRAM, J
OCTOBER 16, 2025**

BETWEEN

CEER PROCESSING LIMITED PLAINTIFF

AND

**THE PRINCIPAL SECRETARY, STATE DEPARTMENT FOR BLUE ECONOMY
& FISHERIES, MINISTRY OF MINING , BLUE ECONOMY AND MARITIME
AFFAIRS 1ST DEFENDANT**

**THE PRINCIPAL SECRETARY, STATE DEPARTMENT FOR PUBLIC WORKS,
MINISTRY OF LANDS, PUBLIC WORKS, HOUSING AND URBAN
DEVELOPMENT 2ND DEFENDANT**

THE ATTORNEY GENERAL 3RD DEFENDANT

RULING

Background

1. The Applicant, Ceer Processing Limited, has moved this Court by way of a Notice of Motion dated 26th June, 2024, seeking orders to reinstate the suit which had been marked as closed pursuant to directions issued on 6th May, 2024. The application is supported by the affidavit of Mohamed Ahmed, a director of the Applicant, and is opposed through Grounds of Opposition dated 30th January, 2025.
2. The suit arises from a contract dated 29th March, 2022, between the Applicant and the State Department for Fisheries, Aquaculture and Blue Economy for the proposed Hazard Analysis Critical Control Point (HACCP) Compliant Ultra-Modern Tuna Fish Hub at Liwatoni, Mombasa County



(Phase 1), under tender MOALF&C/S DFA&BE/013/2021–2022. The contract was terminated on 31st December 2023, giving rise to the present dispute.

3. It is not in dispute that, in a previous ruling of this Court, the matter was referred to arbitration in accordance with Clause 20.4 of the Conditions of Contract. The order to that effect has not been set aside, reviewed, or appealed against. The Applicant now seeks reinstatement of the suit, contending that the arbitral process has become inoperative and incapable of being performed, given the Respondents' alleged non-cooperation and their unilateral re-entry and control over the project site.

Issues for Determination

4.

1. Whether this Court has jurisdiction to reopen the matter notwithstanding the existing order referring the parties to arbitration; and
2. Whether the Applicant has demonstrated sufficient cause to warrant reinstatement of the suit.

Analysis and Determination

On Jurisdiction and the Effect of the Prior Order

5. The court record confirms that by a ruling delivered on 6th May, 2024, this Court directed the parties to pursue arbitration pursuant to Clause 20.4 of the contract and marked the matter as closed. That order stands unchallenged.
6. The effect of such an order is that the Court becomes *functus officio* on the issue of reference to arbitration. The jurisdiction of the Court thereafter is limited to matters provided for under the *Arbitration Act*, such as applications for appointment of an arbitrator, interim measures, or enforcement or setting aside of an award.
7. The principle was succinctly stated in *Kenya Shell Ltd v Kobil Petroleum Ltd* [2006] eKLR, where the Court of Appeal held that once parties have been referred to arbitration, the Court cannot re-open the substantive issues of the dispute unless the arbitration agreement is shown to be null, void, inoperative, or incapable of being performed within the meaning of Section 6(1)(a) of the Act.
8. The Applicant argues that the arbitration process is incapable of being performed because the Respondents have frustrated the same by taking possession of the Liwatoni site and by issuing new tenders. However, the Applicant has not shown any concrete attempt to commence arbitration that was rebuffed or rendered impossible. There is no evidence of a request for appointment of an arbitrator, nor any communication invoking the arbitral clause that failed.
9. In *Niazsons (K) Ltd v China Road & Bridge Corporation (Kenya)* [2001] eKLR, the Court emphasized that where a party alleges frustration of an arbitration agreement, it must demonstrate that all reasonable steps to initiate arbitration were taken and that the process has failed for reasons beyond its control. That has not been done in this case.
10. Absent such demonstration, this Court cannot, in effect, sit on appeal over its own earlier order referring the dispute to arbitration. The proper course for the Applicant would be to move under the *Arbitration Act* for appropriate directions or relief, not to seek reinstatement of the suit already referred.



On Reinstatement of the Suit

- 11. Reinstatement of a suit is a discretionary remedy, guided by the principles set out in *Shah v Mbogo & Another* [1967] EA 116, that such discretion should be exercised to avoid injustice or hardship due to excusable mistake but not to assist a party who has deliberately failed to act.
- 12. Here, the record reveals that the matter was closed after the Court had exercised its jurisdiction to refer the parties to arbitration — not due to inadvertence or error, but by design and in compliance with the parties’ contractual bargain. To reinstate the suit would be to undermine the finality of the Court’s earlier determination and to render nugatory the arbitration clause, which this Court has already upheld.
- 13. While the Applicant raises concerns about the Respondents’ conduct, such issues are properly within the province of the arbitral tribunal once constituted. This Court cannot revive proceedings that have been conclusively referred to another forum unless the arbitration agreement is first declared inoperative by competent judicial pronouncement. Which has not happened.

Disposition

- 14. In the result, the Court finds that:-
 - 1. There exists a valid and subsisting order referring the parties to arbitration, and this Court is therefore functus officio on the question of jurisdiction;
 - 2. The Applicant has not demonstrated that the arbitration agreement has become null, void, or inoperative within the meaning of Section 6(1)(a) of the *Arbitration Act*; and
 - 3. Consequently, there is no basis to reinstate this suit.
- 15. The Notice of Motion dated 26th June, 2024, is accordingly dismissed, with no order as to costs in view of the ongoing relationship between the parties.

DATED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS THIS 16TH DAY OF OCTOBER, 2025

ALEEM VISRAM, FCIArb

JUDGE

In the presence of;

Court Assistant: Lisper

- for Plaintiff/Applicant
- for 1st Defendant/Respondent
- for 2nd Defendant/Respondent
- for 3rd Defendant/Respondent

