



**Wambua & 2 others v Munyoki (Petition E032 of 2024)
[2025] KEHC 13951 (KLR) (Civ) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13951 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CIVIL
PETITION E032 OF 2024
FG MUGAMBI, J
OCTOBER 3, 2025**

BETWEEN

**ALICE WAMBUA 1ST APPLICANT
BENEDICT KUTU META 2ND APPLICANT
BETTERLINE WATER LIMITED 3RD APPLICANT**

AND

HENRY PETER MUNYOKI RESPONDENT

RULING

1. When the respondent, (Henry), filed a Petition dated 16th December 2024 against the applicants, the applicants responded by filing this application, through a Chamber Summons dated 3rd January 2025. They seek an order that the present proceedings be stayed and the dispute referred to arbitration in accordance with the Articles of Association of Betterline Water Limited (the Company).
2. The application is supported by the affidavit of Alice Wambua sworn on 3rd January 2025. She avers that Article 31 of the Company's Articles of Association expressly provides for arbitration as the mandatory mechanism for resolving disputes between members. She contends that the present dispute falls squarely within the scope of that arbitration clause, as it arises from the affairs of the Company.
3. She further emphasizes that the applicants are desirous of having the matter resolved through arbitration in accordance with the contractual agreement of the parties, and that staying these proceedings will not only give effect to their bargain but also advance the policy of promoting alternative dispute resolution.
4. In response, Henry filed a replying affidavit sworn on 28th February 2025. He does not contest the presence of an arbitration clause in the Company's Articles. His position, however, is that he is



not a signatory to the Memorandum and Articles of Association and is therefore not bound by the arbitration agreement contained therein. He further explains that he instituted the Petition together with a Notice of Motion, through which he sought interim relief in the form of both prohibitory and mandatory injunctions pending the hearing and determination of the Petition.

5. He contends that, notwithstanding the alleged arbitration agreement, this Court retains jurisdiction to grant interim protective measures under Section 7 of the *Arbitration Act*.

Analysis and determination

6. The parties filed written submissions, which I have duly considered alongside the application and the reply to it. A single issue arises for determination and that is whether the dispute should be referred to arbitration pursuant to the arbitration agreement contained in the Company's Articles of Association.

7. The application is anchored on Section 6(1) of the *Arbitration Act*, which provides as follows:

“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 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.”

8. In *Niazsons (K) Ltd V China Road & Bridge Corporation Kenya*, [2000] eKLR, the Court emphasized that an applicant for a stay under Section 6(1) must approach the Court promptly and that the Court, in determining such an application, must consider three issues:

- a. Whether the applicant has taken any steps in the proceedings other than those allowed under Section 6;
- b. Whether there exist legal impediments to the validity, operation, or performance of the arbitration agreement; and
- c. Whether the suit indeed relates to matters agreed to be referred to arbitration.

9. The record shows that the applicants filed this application immediately after entering appearance and before taking any further procedural steps. This satisfies the statutory requirement of promptitude and preserves the efficacy of the arbitration clause.

10. Secondly, it is common ground that Article 31 of the Company's Articles of Association contains a broad arbitration clause. The clause expressly stipulates that “every difference relating to the affairs of the Company” shall be referred to arbitration. This demonstrates the parties' clear intention to channel disputes concerning the Company's governance, shareholding, and internal affairs to arbitration rather than litigation.

11. The respondent, Henry, contends that he is not a signatory to the Company's Memorandum and Articles of Association and therefore cannot be bound by the arbitration agreement contained therein. With respect, this contention cannot be sustained. It is trite that the Articles constitute a binding contract between the company and its members inter se, thereby creating enforceable obligations



without the need for individual execution. This principle is codified under Section 19(a) of the *Companies Act*, 2015, which provides that:

“from the date of incorporation of a company, the subscribers to the memorandum, together with such other persons as may from time to time become members of the company, become a body corporate by the name stated in the certificate of incorporation.”

12. This provision makes it clear that membership of a company is not dependent on a physical signature of the Articles or Memorandum. Rather, it arises automatically by virtue of holding shares in the company or otherwise being entered into the register of members. The effect is that once an individual becomes a shareholder, he is, by operation of law, bound by *the Constitution* of the Company as though he had personally covenanted to observe them.
13. Applied to the present case, Henry’s status as shareholder ipso facto makes him a member of the company, and Section 19(a) places him within the corporate body constituted upon incorporation. The statutory contract embodied in the Articles binds him just as it binds all other members, including the arbitration clause contained in Article 31. His argument that he is not a signatory therefore collapses.
14. I must also, with respect, reject Henry’s contention that the present dispute is a pure question of law and therefore unsuited for arbitration. That argument misconceives both the scope of the arbitration clause and the law on arbitrability.
15. As already noted, Article 31 of the Company’s Articles of Association is deliberately broad, providing that “any difference touching the affairs of the Company” shall be referred to arbitration. The dispute at hand directly concerns shareholding and the rights and obligations incidental to membership, which are matters that are quintessentially part of the internal affairs of a company.
16. The mere fact that the dispute may involve questions of law does not oust arbitration. To accept Henry’s argument would be to undermine the clear and binding arbitration agreement and to defeat the legislative policy favouring party autonomy and minimal court intervention.
17. The jurisprudence is clear that once parties have committed to arbitration, courts should be slow to usurp the arbitral forum. This position is emphasized in *UAP Provincial Insurance Co Ltd V Michael John Beckett*, [2013] eKLR, where the Court of Appeal held that the role of courts under Section 6 is to give effect to arbitration agreements except in the narrow circumstances where the agreement is inoperative, incapable of performance or there is no dispute for referral to arbitration. None of those exceptions have been demonstrated here.
18. I must also note that in compliance with the requirements under Section 6(1) of the *Arbitration Act*, besides entering appearance and filing this application on the 6th January 2025, no further action has been taken by the applicants.

Disposition

19. Accordingly, the application is meritorious and is hereby allowed. The proceedings herein are stayed, and the dispute is referred to arbitration in accordance with Article 31 of the Company’s Articles of Association. The applicants shall have the costs of this application.
20. For the avoidance of doubt, in relation to the respondent’s application dated 16th December 2024, the Court further notes that under Section 7 of the *Arbitration Act*, the parties remain at liberty to pursue an application for interim measures of protection for determination on merits.



DATED, SIGNED AND DELIVERED AT NAIROBI THIS 3RD DAY OF OCTOBER 2025.

F. MUGAMBI.

JUDGE

