



Kioko v Kamuthi Housing & Co-operative Society Limited (Environment and Land Case Civil Suit E091 of 2021) [2025] KEELC 6931 (KLR) (14 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6931 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND CASE CIVIL SUIT E091 OF 2021
AY KOROSS, J
OCTOBER 14, 2025**

BETWEEN

MARTIN KAVIU KIOKO PLAINTIFF

AND

KAMUTHI HOUSING & CO-OPERATIVE SOCIETY LIMITED ... DEFENDANT

RULING

1. In a ruling rendered by this court on 23/03/2022, this court found it necessary for the subject matter of this suit to be preserved pending an arbitration process that applies to the issues in dispute between the parties. Consequently, in its ruling, this court dispensed the following orders: -
 - a. An order that status quo be maintained so that there should be no eviction and no further sale, lease, charge, transfer or any dealings whatsoever in respect of land parcel No. Donyo/Kiboko Block 4(KOLOOSO)/605 pending the intended arbitration.
 - b. That the Officer in charge of KBC Police Station do enforce compliance and keep the peace.
 - c. This matter be and is hereby referred to Arbitration in accordance with paragraph 15 of the land sale agreement dated 23rd July, 2020.
 - d. Each party shall bear their own costs.
2. However, despite such a referral 3 years ago, there has been no end in sight as counsels for the parties have either absconded themselves from attending court, or allege they have not agreed on the arbitrator. For one reason or another, the plaintiff changed his law firm on record and on appearing for the plaintiff, Mr. Nzyuko, urged this court to seize jurisdiction over the matter in dispute and allow parties to comply with pretrial directions as envisaged by Order 11 of the Civil Procedure Rules.
3. Essentially, what Mr. Nzyuko is urging this court to do is to review its decision of 23/03/2022. From this, it seems the plaintiff is disgruntled with the delays in the appointment of an arbitrator.



Nevertheless, such a request is not tenable as the legal threshold that governs the review of court decisions, as encapsulated by Section 80 of the *Civil Procedure Act* and Order 45 Rule 1 of the Civil Procedure Rules. Section 80 has not been met, and this prayer is declined.

4. It is worth emphasising that the *Arbitration Act* is a complete code for the resolution and determination of certain disputes, and the provisions of the *Civil Procedure Act* and its Rules are limited insofar as they are appropriate, as is provided for in Rule 11 of the Arbitration Rules, 1997.
5. It is now 3 years since a ruling was rendered, yet the parties appear not to have taken a single step in appointing an arbitrator. Be that as it may, anchored on constitutional underpinnings and the overriding objective of the court on expeditious disposal of court cases, this matter cannot be allowed to clog the court system.
6. The *Arbitration Act* has a whole regime on the appointment of an arbitrator as set in Section 12 thereof, and the parties herein are not constricted in any way. Bearing in mind the overriding purpose of the court to facilitate the just, expeditious, proportionate and affordable resolution of the matters before the court and to expedite this matter, this court directs as follows: -
 - a. As envisaged by Section 12 of the *Arbitration Act*, parties are hereby directed to appoint an arbitrator within 90 days hereof.
 - b. This matter shall be mentioned for purposes of updating the court on the progression of the arbitral process.

Orders accordingly.

DELIVERED AND DATED AT MACHAKOS THIS 14TH DAY OF OCTOBER, 2025.

HON. A. Y. KOROSS

JUDGE

14.10.2025

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Josephine Court Assistant.

Mr Guda holding brief for Mr. Nzyuko for plaintiff.

N/A for defendant.

