



Sino t/a Maywood Auctioneers v NCBA (Formerly NIC Bank Limited) (Miscellaneous Application E030 of 2025) [2025] KEHC 15339 (KLR) (31 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15339 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E030 OF 2025
A MABEYA, J
OCTOBER 31, 2025**

BETWEEN

GEORGE ARUNGA SINO T/A MAYWOOD AUCTIONEERS APPLICANT

AND

NCBA (FORMERLY NIC BANK LIMITED) RESPONDENT

RULING

1. On the 24/7/2012, the respondent and the applicant entered into an agreement for the provision of amongst others collection, recovery and auctioneering services. Paragraph 12 of the said agreement provided an arbitral clause in case of any dispute.
2. Following the respondent's refusal to pay auctioneer fees of Kshs. 82,000,000/-, the dispute was referred to arbitration vide a court order issued by this Court, Ochieng J. (as he was then), on the 13/01/2022.
3. From the record, it is evident that the parties consented to the appointment of Dr. Wilfred Mutubwa as the sole arbitrator in the dispute who proceeded to handle the matter to near conclusion pending the delivery of his arbitral award. However, Dr. Mutubwa passed on before delivery of the said award.
4. The applicant has now moved this Court vide Originating Motion seeking an order that one Calvin Nyachoti C.Arb be appointed as a sole arbitrator in the dispute between the parties herein. The Motion is brought under the provisions of section 12 (1-9) of the *Arbitration Act* No. 4 of 1995.
5. The Motion is anchored on the grounds set out therein as well as the supporting affidavit sworn by George Arunga Sino on the 26/02/2025. The applicant avers that he had a service level agreement with the respondent that contained an arbitration clause in the event of a dispute between the parties.



6. That following the respondent's refusal to pay auctioneer fees of Kshs. 82,000,000/-, the dispute was referred to arbitration that was handled to near conclusion by Dr. Wilfred Mutubwa who unfortunately passed on prior to delivery of the arbitral award.
7. That the delay in delivery of the arbitral award was occasioned by the respondent's delay in paying its share of the arbitral fees whereas the applicant had completed its portion in full. That following Dr. Mutubwa's death, his law firm proposed one Calvin Nyachoti C.Arb to proceed and conclude the subject dispute but the proposal was rejected by the respondent.
8. That the applicant approached the Chartered Institute of Arbitrators vide a letter dated 20/12/2024 asking them to appoint an arbitrator to conclude the dispute but the Institute declined stating that it could not intervene as Dr. Mutubwa had been appointed by consent of the parties. That consequently the parties herein cannot agree on an arbitrator as the respondent rejected the appointment of Mr. Nyachoti.
9. A preliminary objection dated 9/04/2025 against the Motion was raised by the respondent on the basis that the application is time barred as per section 4 (1) of the *Limitation of Actions Act* as the cause of action arose in 2014, which is more than 10 years ago.
10. The issue for determination is whether this Court can proceed to appoint an arbitrator to complete the dispute that had been initiated before the late Dr. Wilfred Mutubwa.
11. I have considered the record and the submissions of the parties. As a preliminary, the respondent has raised an objection that the counterclaim by the respondent was statute-barred and thus defeated by dint of section 4(1) of the Limitations of Actions Act as the cause of action arose in 2014, which is more than 10 years ago.
12. It is not in dispute that the dispute between the parties arose in 2014. The dispute was referred to arbitration by an order of this Court on the 12/4/2018. Arbitration proceedings commenced and was handled to near conclusion by Dr. Wilfred Mutubwa who unfortunately died on the 18/12/2024. It is thus evident that the dispute has been alive under arbitration and thus I find and hold that the application is not barred by the provisions of section 4 (1) of the Limitations of Actions Act. On the contrary, the cause of action was timeously lodged and or mounted. Time stopped running when the Court made an order for arbitration in 2018 and the arbitral proceedings commenced.
13. As already stated, the Service Level Agreement between the parties contained an arbitral clause. Section 12 of the *Arbitration Act*, 1995 provides for the appointment of arbitrators. It is clear from the Agreement that it had an arbitral clause which provided that where the parties do not agree on the appointment of a single arbitrator within 14 days, "the Chairman for the time being of the Kenyan Branch of the Chartered Institute of Arbitrators (of the United Kingdom) on the application of either party."
14. The record reveals that the respondent approached the Chartered Institute of Arbitrators Kenya Branch vide a letter dated 27/1/2025 however the Institute declined stating that the late Dr. Mutubwa had been appointed by consent of the parties and not the Institute.
15. Since a dispute has arisen, I hold that the arbitral clause has kicked in. That since the parties did not concur on the appointment of a single arbitrator, the application is meritorious. The Chartered Institute has the mandate to appoint an Arbitrator in this issue and cannot shun the said obligation.
16. Accordingly, I allow the application. I direct the Chairperson of the Chartered Institute of Arbitrators of Kenya to appoint a single arbitrator within 30 days of this order, to determine the dispute between



the applicant and respondent arising from the Service Level Agreement dated 24/7/2012 between the parties herein.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 31ST DAY OF OCTOBER, 2025.

A. MABEYA, FCI Arb

JUDGE

