



**Wayne Bells Development & Holdings Holdings Limited v Mace YMR t/a
Intergrated YMR Patnership & another (Miscellaneous Application E924 of 2024)
[2025] KEHC 15405 (KLR) (Commercial and Tax) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E924 OF 2024**

**PM MULWA, J
OCTOBER 30, 2025**

BETWEEN

**WAYNE BELLS DEVELOPMENT & HOLDINGS HOLDINGS
LIMITED APPLICANT**

AND

**MACE YMR T/A INTERGRATED YMR PATNSHIP 1ST RESPONDENT
KAMAU KARORI SC. CIARB 2ND RESPONDENT**

RULING

1. The applicant approached this court vide the Notice of Motion dated 7th November 2024, brought under Sections 14(3) and (7) of the *Arbitration Act*, Rule 11 of the Arbitration Rules, Sections 1A,1B and 3A of the *Civil Procedure Act*, and Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law. In substance, the Applicant seeks, inter alia, an order staying the arbitral proceedings before the Sole Arbitrator, Mr. Kamau Karori, an order staying execution of the partial award arising from the ruling delivered by the arbitrator, and further, an order setting aside the said ruling and terminating the arbitrator's mandate pursuant to Section 14(3) of the *Arbitration Act*.
2. The Application is supported by the grounds on its face and the affidavit sworn by Peter Kinyanjui Nyaga. The gist of the Applicant's case is that it entered into a consultancy agreement with the 1st Respondent in 2018, which provided for a multi-tier dispute resolution mechanism, beginning with amicable settlement and culminating in arbitration as a last resort.
3. The Applicant contends that the 1st Respondent unilaterally commenced arbitration without adhering to the agreed procedure and without notifying the Applicant of the appointment of the 2nd Respondent as the arbitrator. It is further alleged that the said arbitrator, Mr. Kamau Karori, and his



firm Iseme, Kamau & Maema Advocates, were conflicted as they had previously been consulted by the Applicant in relation to the project giving rise to the dispute.

4. The Applicant asserts that despite raising an objection to the appointment of the arbitrator on grounds of conflict of interest, the arbitrator dismissed the objection vide a ruling dated 4th October 2024, in which he also made a partial award directing the Applicant to settle the costs of the tribunal and the costs of the challenge. The Applicant now seeks this Court's intervention to set aside the said ruling, stay the proceedings, and terminate the arbitrator's mandate.
5. The Application is opposed. The 1st Respondent filed a Replying Affidavit sworn by Peter Ndung'u on 25th November 2024, contending that the Application is incompetent, frivolous and an abuse of the court process. It is deponed that the application offends Rule 3(2) of the Arbitration Rules as it was not filed within the prescribed period and that the interim orders issued by this Court staying the arbitral proceedings contravene Section 14(8) of the *Arbitration Act*. The 1st Respondent further maintains that the Applicant was duly notified of the appointment of the arbitrator through correspondence dated 25th January 2024 and 9th February 2024, but failed to participate in the appointment process, thereby waiving its right to object under Section 5 of the *Arbitration Act*.

Analysis and determination

6. I have considered the Application, the affidavits on record, and the rival submissions by learned counsel for the parties. The issue for determination is whether the application is merited.
7. Section 14(3) of the *Arbitration Act* provides that where an arbitral tribunal rules that a challenge to its independence or impartiality is unfounded, the aggrieved party may, within thirty days after receiving notice of the ruling, apply to the High Court for determination of the matter. The Court's jurisdiction in such a challenge is supervisory and limited in scope. The policy of the law is to respect party autonomy and minimize judicial interference in arbitration except where expressly permitted by statute. (See *Nyutu Agrovet Limited v Airtel Networks Kenya Limited & Another* [2019] eKLR).
8. The 1st Respondent contends that the application is incompetent for being filed out of time. From the record, the ruling by the arbitrator was delivered on 4th October 2024, and the present application was filed on 7th November 2024. The thirty-day period under Section 14(3) expired on 3rd November 2024. The Application was thus filed four days out of time, and no leave of Court was sought to enlarge time. Time limits under the *Arbitration Act* are mandatory and not merely procedural. In *Ann Mumbi Hinga v Victoria Real Estate Development Ltd* [2009] eKLR, the Court of Appeal held that failure to comply with the strict timelines under the *Arbitration Act* renders an application incompetent.
9. Consequently, this Court finds that the Application was filed out of time and offends the express provisions of Section 14(3) of the Act.
10. Even if the Application were competently before this Court, I would still find that the Applicant has failed to establish a basis for terminating the arbitrator's mandate. Under Section 13(3) of the *Arbitration Act*, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. The burden rests upon the party alleging bias to demonstrate real, not fanciful, likelihood of bias.
11. In the present case, the Applicant has not placed before this Court any documentary or affidavit evidence establishing the alleged conflict of interest. No retainer letter, invoice, or correspondence has been produced to show that Iseme Kamau & Maema Advocates acted for the Applicant in relation to the subject project. The mere allegation of prior consultation, unsupported by evidence, is insufficient to impeach the arbitrator's independence.



12. Furthermore, Section 14(8) of the *Arbitration Act* provides that while an application under subsection (3) is pending before the High Court, the arbitral tribunal may continue the proceedings and make an award. The prayer for stay of proceedings thus runs contrary to the express wording of the statute. As held in *Christ for All Nations v Apollo Insurance Co. Ltd* [2002] 2 EA 366, courts must refrain from interfering with the arbitral process unless a clear statutory basis is established.
13. Accordingly, the Notice of Motion dated 7th November 2024 is hereby dismissed with costs to the 1st Respondent.

Orders accordingly.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF OCTOBER 2025.

P.M. MULWA

JUDGE

In the presence of:

Ms. Kimathi for Applicant

Mr. Olala for 1st Respondent

Court Assistant: Carlos

