

b. THAT this honourable court be pleased to stay the proceedings herein and the issues raised in the suit be referred to arbitration.

c. THAT the parties appoint an arbitrator to determine the dispute herein pursuant to Clause 21 of the Sale agreement dated 8/08/2018.

2. The motion is supported by the grounds set out in the body thereof and the defendant's affidavit sworn on the instant date. Substantially, he states that the plaintiff entered a sale agreement with the defendant on 8/08/2018, for land parcel no. **Machakos Municipality/Block 1/640 ("suit property")** worth Kshs 115,000,000. The agreement includes a mandatory arbitration clause for resolving disputes under *clause 21* thereof, which states explicitly: -

"Save as may be otherwise provided herein, all questions in dispute arising between the parties herein and all claims or matters in such dispute not otherwise mutually settled between the parties shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 14 days of the notification of dispute by either party to the other, upon application by either party to the Chairman of the time being of

the Kenya Branch of Chartered Institute of Arbitrators.”

3. The defendant argues that the court lacks jurisdiction to hear the case since the plaintiff did not seek arbitration as required and expresses his willingness to resolve the dispute through arbitration, stating that allowing the summons would uphold the intentions of both parties regarding dispute resolution. A copy of this agreement was tendered to the court.
4. On service, the plaintiff strongly opposed the motion with a replying affidavit sworn on 4/02/2025 by Michael Mutua. In his statements, he explains that there is no genuine dispute that justifies arbitration under the **Arbitration Act**. He maintains that the contract presented by the defendant does not match the one actually signed by the parties. According to him, the purchase price in the correct agreement is Kshs. 140,000,000/- rather than Ksh. 150,000,000, which he believes indicates fraudulent conduct. The agreement for sale that the plaintiff refers to as the proper one was attached to the replying affidavit, but is incomplete.
5. The motion is canvassed by written submissions filed by the law firms of **Mss Mulyungi & Mulyungi & Associates Advocates** for the plaintiff, dated 5/06/2025, and **Moblaw Advocates** for the defendant, dated 25/05/2025. The submissions submitted by the plaintiff did not comply with the

court's directives regarding page limits; accordingly, the court will disregard them, and they are hereby expunged.

6. Accordingly, the court has considered the defendant's submissions and the arguments contained therein, together with the provisions of the law relied upon and the judicial precedents cited, which shall be regarded in this court's analysis and determination. Consequently, having carefully considered the motion, its grounds, affidavits, and the defendant's submissions, the singular issue for determination is **whether this matter should be stayed and referred to arbitration**. In dealing with this issue, it is pertinent to highlight the relevant law and jurisprudence.

7. Respecting applicable law, **Article 159(2)(c)** of our Constitution entrenches arbitration in Kenya as an alternative dispute resolution (ADR) method. It states that, when exercising judicial authority, courts and tribunals shall, subject to **clause (3)** thereof, be guided by principles of alternative dispute resolution such as reconciliation, mediation, arbitration, and traditional mechanisms, which should be promoted as outlined in the **clause**. In furtherance of this Article, our **Arbitration Act, CAP 49**, which was last amended by **Revised by 24th Annual Supplement (Legal Notice 221 of 2023) on 31 December 2022**, breathes life into this **Article**. The Supreme Court in **Synergy Industrial Credit Limited v Cape Holdings Limited**

[2019] KESC 12 (KLR) held as follows on the legal framework of arbitration: -

“In interpreting the arbitration law, one should never lose sight of the purpose of the enactment of the Act and in addition, the fact that the Constitution under article 159(2)(c) on judicial authority enjoined courts to be guided by the principles of alternative forms of dispute resolution such as arbitration. Arbitration was an attractive way of settling commercial disputes by virtue of the perceived advantages it brought beyond what was generally offered by the normal court processes, which were often characterised by formalities and delays. In addition, arbitration regime was meant to ensure that there was a process, distinct from the courts, of effectively and efficiently solving commercial disputes, the law also recognised that such a process was not absolutely immune from courts’ intervention. Courts of law remained the ultimate guardians and protectors of justice and hence, they could not be completely shut off from any process of seeking justice.”

8. In challenging this court’s jurisdiction, the defendant asserts that, as the arbitration agreement is domestic in accordance with **Section 2** of the **Arbitration Act**, the suit and the

related proceedings should be stayed pursuant to **Section 6** of the same **Act**. This provision explicitly states that: -

“(1)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 is sought, stay the 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.

(2)Proceedings before the court shall not be continued after an application under subsection (1) has been made and the matter remains undetermined.

(3)If the court declines to stay legal proceedings, any provision of the arbitration agreement to the effect that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.”

9. In this case, the defendant promptly approached the court pursuant to **Section 6**; thus, this court finds that the summons is duly presented before it. The manner in which the defendant has approached the court is not new and has been the subject of several court pronouncements. By these decisions, it is now established law that when parties agree to resolve any disputes arising from a commercial agreement by arbitration, courts are required to respect that agreement by staying proceedings and referring the matter to arbitration. In **Synergy (Supra)**, the court held in **paragraph 8** that: -

“Once parties agreed to settle their disputes through arbitration, the arbitral tribunal should be the core determinant of their dispute.”

10. In dealing with the motions of this nature and before staying the proceedings, the court has first to satisfy itself and be convinced that there is a valid and enforceable arbitration clause that exists within the agreement. In this instance, the parties have presented two sets of agreements for consideration by this court, all dated 8/08/2018. The plaintiff contends that the contract that binds the parties is the one that references the purchase price as Kshs. 140,000,000. Nonetheless, and in agreement with the defendant, the plaintiff mischievously failed to attach a complete copy of this agreement. Be that as it may, and in any event, it had

tendered a copy of this agreement in its list of documents dated 26/09/2025, and *clause 21* thereof provides-

“21. Disputes and Arbitration

Save as may be otherwise provided herein, all questions in dispute arising between the parties hereto and all claims or matters in such dispute not otherwise mutually settled between the parties shall be referred to arbitration by single arbitrator to be appointed by agreement between the parties or in default of such agreement within Fourteen (14) days of the notification of such dispute by either party to the other, upon application by either party to the Chairman for the time being of the Kenya Branch of Chartered institute of Arbitrators ("the Institute").

(a) Such Arbitration shall take place in Machakos and every award made under this Clause shall be subject to and in accordance with the provisions of the Arbitration Act 1995 (Act No. 4 of 1995) or any statutory modification or re-enactment thereof or such other Act or Acts for the time being in force in Kenya in relation to arbitration and the Rules of Arbitration of the Institute.

(b) To the extent permissible by law the determination of the Arbitrator shall be final and binding upon the parties and any Party may apply to a Court of competent jurisdiction for enforcement of such award.

(c) Notwithstanding the above provisions of this clause, a party is entitled to seek preliminary injunctive reliefs or interim or conservatory measures from any Court of competent jurisdiction pending the final or award of the Arbitrator.”

11. This clause is reproduced verbatim in *clause 21* of the agreement, which states the purchase price as Kshs. 115,000,000, therefore, it is constrained from distancing itself from the arbitration agreement. As recorded in **BLUE LIMITED v JARIBU CREDIT TRADERS LIMITED [2008] KEHC 1347 (KLR)**, which is relied upon by the defendant and which this court associates itself with, when an agreement includes an arbitration clause, that clause is considered a distinct and separable agreement between the parties, who agree to resolve any disputes related to the agreement via arbitration. A party cannot question the validity of the overall agreement to challenge the arbitration clause.
12. Although the plaintiff disputes the agreement, revealing the purchase price of Kshs. 115,000,000, and claims it is fraudulent, it cannot evade the arbitration clause within the contract that states the purchase price as Kshs. 140,000,000, which it contends is the genuine agreement that binds the parties.
13. Significantly, the question of whether the agreements (as the case may be) entered into between the plaintiff and the

defendant are valid is a matter that can only be resolved during the arbitration hearing. This court's concern is whether the arbitration clauses within the two agreements are valid and therefore capable of enforcement as outlined in **Section 6(1)(a)** of the **Arbitration Act**. When faced with the issue of the validity of contracts, the decision of **Euromec International Limited v Shandong Taikai Power Engineering Company Limited [2021] KEHC 93 (KLR)**, with which this court concurs with stated: -

“The other reason to bear in mind is that the Arbitrator, and not the court has authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of the agreement including, but not limited to any claim that all or any part of the agreement is void or voidable.”

14. After examining *clause 21* of both contracts, it is clear that the arbitration agreement is valid and enforceable. The agreement shows that the parties consented to the arbitration seat, location, and applicable law. Without evidence of fraud or misrepresentation, they are bound by their choices, and this court has no authority to override their preferences.
15. Consequently, and in accordance with the law and judicial precedents, this court must find that the motion is merited,

and it allows it with costs to the defendant. Finally, the court hereby issues the following final disposal orders: -

- a. That these proceedings be and are hereby stayed pending hearing and determination of the arbitration of the dispute (s) between the parties.***
- b. This matter be and is hereby referred to an arbitrator pursuant to clause 21 of the two agreements for sale, both dated 18/08/2018.***
- c. Costs of the notice of motion dated 7/01/2025 are awarded to the defendant.***
- d. A mention date shall be given for purposes of updating the court on the arbitral process.***

It is so ordered.

Delivered and Dated at Machakos this 16th day of December, 2025.

**HON. A. Y. KOROSS
JUDGE
16.12.2025**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms Kanja Court Assistant

Miss Omari for Mr. Mulyungi for plaintiff/respondent.

Mr. Mwangi for the defendant/applicant.

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