



**Orient Enterprises Limited v Minghui (Commercial Miscellaneous Application E785 of 2023)  
[2025] KEHC 19065 (KLR) (Commercial and Tax) (19 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 19065 (KLR)

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

**COMMERCIAL MISCELLANEOUS APPLICATION E785 OF 2023**

**MN MWANGI, J**

**DECEMBER 19, 2025**

**IN THE MATTER OF THE ARBITRATION ACT, 1995**

**-AND-**

**IN THE MATTER OF THE NAIROBI CENTRE FOR  
INTERNATIONAL ARBITRATION (NCIA) ACT**

**-AND-**

**IN THE MATTER OF THE NCIA (ARBITRATION) RULES, 2015**

**-AND-**

**IN THE MATTER OF REMOVAL OF AN ARBITRATOR**

**BETWEEN**

**ORIENT ENTERPRISES LIMITED ..... APPLICANT**

**AND**

**LU MINGHUI ..... RESPONDENT**

**RULING**

1. The applicant filed a Notice of Motion application dated 11<sup>th</sup> September 2023 pursuant to the provisions of Articles 27(1), 47(1), 159(1) & (2), 165(6) & (7) of *the Constitution* of Kenya, Section 14(3) of the *Arbitration Act*, 1995, Order 42 Rule 6 of the Civil Procedure Rules, 2010, Sections 1, 1A, 3 & 3A of the *Civil Procedure Act* and all other enabling provisions of the law. The applicant seeks an order for stay of the ongoing arbitral proceedings in NCIA DIS/ARB/16/22 (Lu Minghui v Orient



- Enterprises Limited), and pursuant to Section 14(8) of the *Arbitration Act*, 1995, the applicant seeks an order that no arbitral award shall take effect until this application is determined and that any such award be rendered void if the application succeeds. The applicant also seeks an order for the removal of the Arbitrator, Hon. Mr. Bwalya Lumbwe, from the Arbitral Tribunal and an order allowing the adoption of its statement of defence, documents, and witness statements in the arbitral proceedings.
2. The application is premised on the grounds on the face of the Motion, and it is supported by an affidavit sworn on the same day by Mr. James Mahinda Wairoto, an Advocate of the High Court of Kenya and learned Counsel for the applicant. Mr. Wairoto outlined the circumstances giving rise to the request for removal of the Arbitrator and stay of the arbitral proceedings. He explained that the parties consented to Order for Directions No. 1 issued on 26<sup>th</sup> June 2023, which set strict timelines for the filing of pleadings. That although the respondent was required to file its statement of claim by 7<sup>th</sup> July 2023, it instead submitted documents directly to the Arbitrator without copying the Tribunal, and only forwarded the statement of claim to the Case Manager three (3) days after the deadline, without seeking leave for late filing. He contended that the applicant was neither invited to comment on this non-compliance, nor was the respondent directed to seek an extension of time.
  3. He deposed that converse to the foregoing, when the applicant filed its statement of defence on 3<sup>rd</sup> August 2023, three (3) days out of time, the Arbitrator, through Procedural Decision No. 1 dated 8<sup>th</sup> August 2023, rejected it. He stated that being aggrieved, the applicant promptly applied for the removal of the Arbitrator on grounds of bias and unfair treatment, but the Tribunal declined the request on 25<sup>th</sup> August 2023, advising the applicant to seek an extension of time under Rule 25(1) (b) of the NCIA Arbitration Rules. That subsequently, the applicant sought extension of time on 28<sup>th</sup> August 2023, but this too was rejected in Procedural Decision No. 4 dated 7<sup>th</sup> September 2023. Mr. Wairoto contended that unless the Court stays the arbitral proceedings, the applicant will be denied a fair opportunity to defend the claim, as the Arbitrator has acted unfairly, unreasonably, and without impartiality by barring the applicant's documents.
  4. In opposition to the application, the respondent filed a Notice of Preliminary Objection dated 19<sup>th</sup> September 2023, raising the following grounds –
    - i. This Honourable Court lacks requisite jurisdiction to hear the Notice of Motion dated 11<sup>th</sup> September 2023 by operation of Section 22 of *Nairobi Centre for International Arbitration Act* No.26 of 2013 as read together with Rule (sic) 11(6) of the Nairobi Centre for International Arbitration, Arbitration Rules, 2015, which prescribe that the decision of the Arbitral Court established under Section 21 of the NCIA Act in exercise of its mandate to decide an application for the removal of an Arbitrator is final;
    - ii. This Honourable Court lacks appellate jurisdiction to interfere and/or overturn any Rulings made by the Arbitral Tribunal in respect of the arbitral proceedings and specifically to order adoption of the applicant's documents, by the operation of Section 22 of *Nairobi Centre for International Arbitration Act* No. 26 of 2013 which vests upon the Arbitral Court established under Section 21 of the NCIA Act exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with the Act or any other written law;
    - iii. The application of Section 14 of the *Arbitration Act* granting the High Court the power to hear an application for the removal of an Arbitrator is specifically ousted by operation of Section 3 and Section 22 of *Nairobi Centre for International Arbitration Act* No. 26 of 2013 read together with Rule 11(6) of the Nairobi Centre for International Arbitration, Arbitration Rules, 2015, as well as the Lex specialis derogate legi generali doctrine. The jurisdiction to



entertain appeals against orders and decisions made in the course of arbitration is a reserve (sic) of the Arbitral Court established under Section 21 of the NCIA Act; and

- iv. Even if the Arbitration Act was applicable, this Honourable Court would similarly lack the requisite jurisdiction conferred under Section 14 of the Arbitration Act to hear the present application as no decision has been rendered by the 'Arbitral Tribunal' as contemplated in Section 14(2) as read together with Section 3(1) of the Arbitration Act which ultimately forms the basis of invoking this Honourable Court's jurisdiction under Section 14(3), (4), (5) and (6) of the Arbitration Act.
5. The respondent also filed a replying affidavit sworn on 11<sup>th</sup> October 2023 by Mr. Mugo Kamau, an Advocate of the High Court of Kenya and learned Counsel for the respondent. Mr. Kamau averred that the dispute between the applicant and the respondent was referred to arbitration pursuant to an arbitral clause in their commercial contract and a subsequent consent to have the matter administered by the Nairobi Centre for International Arbitration (NCIA). He stated that by agreement of the parties, Mr. Bwalya Lumbwe was appointed as the sole Arbitrator in NCIA DIS/ARB/16/22 (Lu Minghui v Orient Enterprises Limited). He claimed that during the arbitral proceedings, the applicant repeatedly failed to comply with procedural directions issued by the Tribunal, and that under Order for Directions No. 1, the parties had agreed on timelines for filing pleadings and documents, but the applicant failed to file its statement of defence and supporting documents within the stipulated period.
6. He deposed that the said circumstances prompted the Tribunal to issue Order for directions No. 2, requiring the applicant to show sufficient cause for the delay, an invitation the applicant did not formally respond to, and as a result, the Tribunal issued Procedural Decision No. 1 on 8<sup>th</sup> August 2023, declaring the applicant's documents time-barred. Mr. Kamau deposed that despite further Directions under Order for Directions No. 3 regarding Expert Reports, the applicant again failed to comply, leading to an additional order for directions on 17<sup>th</sup> August 2023 requiring justification for the non-compliance, but the applicant again failed to respond, and the Tribunal issued Procedural Decision No. 2 on 23<sup>rd</sup> August 2023, barring the applicant's Expert Reports. Counsel asserted that the Tribunal's actions arose solely from the applicant's persistent non-compliance with agreed timelines and Tribunal directions.
7. The application herein and the respondent's Notice of Preliminary Objection were canvassed by way of written submissions. The applicant's submissions were filed on 9<sup>th</sup> October 2023 by the law firm of MW & Company Advocates LLP, while the respondent's submissions were filed by the law firm of Mugo Mugo & Company Advocates t/a Double M Advocates on 11<sup>th</sup> October 2023.
8. Mr. Irungu, learned Counsel for the applicant submitted that this Court has the jurisdiction to determine the application herein pursuant to the provisions of Sections 7, 13 & 14 of the Arbitration Act, 1995. He argued that Section 7 permits the High Court to grant interim measures of protection before or during arbitral proceedings, whereas Sections 13 & 14 of the said Act provide the framework for challenging an Arbitrator on grounds of impartiality, independence, or procedural irregularity. Counsel stated that it issued a written challenge to the Arbitrator on 10<sup>th</sup> August 2023, the Tribunal rejected the challenge on 25<sup>th</sup> August 2023, and the instant application was filed on 11<sup>th</sup> September 2023, well within the statutory 30-day period. He contended that the applicant's constitutional and statutory rights, including equality before the law under Article 27, the right to fair administrative action under Article 47, and the principles in Article 159(2) of the Constitution were infringed when the Arbitrator declined to admit its statement of defence, documents, and Expert Reports, while allegedly giving the respondent leeway regarding late filings.



9. Mr. Irungu submitted that this unequal treatment violated the provisions of Section 19 of the *Arbitration Act*, which mandates equal treatment of parties and a fair opportunity to present one's case, and was contrary to the principles of natural justice as articulated by the Court in the case of *Norbrook Laboratories Ltd v Tank* [2006] EWHC 1055. Counsel further submitted that the Arbitrator's conduct gives rise to justifiable doubts as to his impartiality within the meaning of Section 13(3) of the *Arbitration Act* and Rules 8 & 11 of the NCIA Arbitration Rules, 2015. He relied on the Court of Appeal case of *Rawal v Judicial Service Commission & another; Okoiti (Interested Party); International Commission of Jurists & another (Amicus Curiae)* [2016] KECA 534 (KLR), and asserted that the Arbitrator failed to apply Rule 25(1)(b) of the NCIA Rules by not inviting the applicant's views on the respondent's late filing while requiring the respondent to comment on the applicant's own late filing, thereby creating an appearance of bias.
10. Mr. Irungu explained that the applicant's failure to meet filing deadlines arose from unavoidable personal bereavement within his law firm and pressing obligations before the Court of Appeal, and submitted that mistakes of Counsel should not be visited on the client, citing the case of *Gideon Mose Onchwati v Kenya Oil Co. Ltd & another* [2017] KEHC 8960 (KLR). He argued that the Arbitrator's actions amount to misconduct as defined in the case of *Nyang'au v Omosa Nyakwara* [1986] KLR 712 and *Bremer v Ets Soules* [1985] 1 Lloyd's L.R.160, demonstrating either actual or imputed bias. Counsel contended that no prejudice would result to the respondent from the admission of the applicant's defence and witness statements, whereas the refusal to admit them renders the claim wholly undefended and denies the applicant a fair hearing. Mr. Irungu submitted that the applicant has met the threshold for removal of the Arbitrator and urged this Court to grant the orders being sought herein.
11. Mr. Mugo, learned Counsel for the respondent submitted that the jurisdiction of this Court to intervene in arbitral proceedings is strictly limited by Section 10 of the *Arbitration Act* and Article 5 of the UNCITRAL Model Law, both of which restrict judicial intervention in instances expressly provided for in the Act. Relying on the case of *Euromec International Limited v Shandong Taikai Power Engineering Company Limited* [2021] KEHC 93 (KLR) and the Supreme Court cases of *Synergy Industrial Credit Limited v Cape Holdings Limited* [2019] KESC 12 (KLR) and *Nyutu Agrovet Limited v Airtel Networks Kenya Limited; Chartered Institute of Arbitrators-Kenya Branch* [2019] KESC 11 (KLR), he asserted that Courts must respect the autonomy of arbitration in line with Article 159(2)(c) of *the Constitution*.
12. Counsel cited the cases of *Chania Gardens Limited v Gilbi Construction Company Limited & another* [2015] KEHC 6202 (KLR) and *Kenya Medical Women's Association v Registered Trustees Gertrude's Gardens; Paul Ngotho, Arbitrator (Interested Party)* [2021] KEHC 13281 (KLR), and argued that Section 14 of the *Arbitration Act* prescribes the procedure for challenging an Arbitrator and makes it clear that the High Court does not have original jurisdiction to remove an Arbitrator, as a party must first present the challenge to the Arbitral Tribunal and may only approach the Court under Section 14(3) after the Tribunal has rendered a decision.
13. In this instance, Mr. Mugo contended that no decision was made by the Arbitral Tribunal rejecting the challenge, as the determination was made by the Registrar of the NCIA pursuant to the NCIA Act and Rules, a process distinct from the *Arbitration Act*. Counsel maintained that a Registrar's decision cannot be equated to that of an Arbitral Tribunal under Section 14 of the *Arbitration Act*, and it cannot trigger this Court's jurisdiction.
14. Counsel argued that Section 14 of the *Arbitration Act* is displaced by Section 22 of the NCIA Act, as read with Rule 11(6) of the NCIA Arbitration Rules and Section 3 of the NCIA Act, which



collectively confer upon the NCIA Arbitral Court, of which the Registrar is a member, authority to determine challenges to Arbitrators. He submitted that the removal application before the NCIA was properly handled under the said framework, and that Section 22 expressly renders decisions of the Arbitral Court final. Relying on the case of Robert Kulinga Nyamu v Musembi Mutunga & another [2022] KEELC 1367 (KLR), Counsel contended that the applicant cannot invoke the Arbitration Act to review a decision issued under the NCIA Act. He stated that where conflict exists between the two statutes, Section 3 of the NCIA Act provides that the NCIA Act prevails as the more specific legislation.

15. Regarding the reliefs being sought herein, Mr. Mugo submitted that the Arbitration Act contains no provision empowering Courts to stay arbitral proceedings. Citing the case of UAP Provincial Insurance Company Ltd v Joseph Muriuki Kenyatti & another [1998] KEHC 229 (KLR), he submitted that the only form of stay contemplated under the Act is stay of Court proceedings pending referral to arbitration under Section 6. He contended that Section 10 of the Arbitration Act bars this Court from staying ongoing arbitral proceedings.
16. He submitted that Section 14(8) of the Arbitration Act does not empower the Courts to restrain issuance of an award, but only stipulates that any award issued while a Section 14(3) application is pending, does not take effect until the application is determined, and is void only if the challenge succeeds. He argued that since the prayer to restrain issuance of an award was not part of the initial challenge before the NCIA, this Court lacks jurisdiction to grant it.
17. Mr. Mugo maintained that this Court has no jurisdiction to intervene in matters relating to the admission of documents or the management of arbitral proceedings, which fall exclusively within the discretion of the Arbitral Tribunal under Section 26(b) of the Arbitration Act and Rule 15 of the NCIA Rules. He relied on the case of the Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1, and submitted that each of the orders being sought herein is beyond this Court’s statutory mandate and is expressly barred by Sections 10 and 14 of the Arbitration Act and Sections 3 and 22 of the NCIA Act.

### **Analysis And Determination.**

18. I have considered the instant application, the grounds on the face of it, and the affidavit filed in support thereof, the respondent’s Notice of Preliminary Objection and the replying affidavit, and the written submissions by Counsel for the parties. The issues that arise for determination are –
  - i. Whether this court has the requisite jurisdiction to determine the application herein;
  - ii. Whether an order for stay of the ongoing arbitral proceedings in NCIA DIS/ARB/16/22 should be granted;
  - iii. Whether the Arbitrator in the aforesaid arbitral proceedings, Hon. Mr. Bwalya Lumbwe, should be removed from the Arbitral Tribunal; and
  - iv. Whether the applicant’s statement of defence, documents, and witness statements should be adopted in the arbitral proceedings.

### **Whether this Court has the requisite jurisdiction to determine the application herein.**

19. The respondent’s position is that this Court lacks the jurisdiction to entertain the application herein. In the oft cited case of the Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1. Nyarangi, JA., held that-



...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

20. The respondent's objection is two-fold. Firstly, that Section 22 of the NCIA Act as read with Rule 11(6) of the NCIA Arbitration Rules, vests exclusive original and appellate jurisdiction over the removal of Arbitrators upon the Arbitral Court established under Section 21 of the NCIA Act, and renders its decisions final. Secondly, that this Court's jurisdiction under Section 14(3) of the said Act has not been triggered because no decision was made by an Arbitral Tribunal as defined under Section 3 of the [Arbitration Act](#).
21. The applicant on the other hand relied on the provisions of Sections 7, 13 & 14 of the [Arbitration Act](#) and argued that it challenged the Arbitrator before the Tribunal, but the Tribunal rejected the challenge on 25<sup>th</sup> August 2023, hence it filed the application herein.
22. The applicant submitted that the instant application was filed within the requisite statutory 30-day period. It contended that the alleged bias and denial of an opportunity to be heard on the part of the Arbitrator as against the applicant, raises constitutional and statutory concerns that fall within the supervisory jurisdiction of this Court.
23. Section 10 of the [Arbitration Act](#) expressly limits the intervention of Courts in arbitration matters to instances provided for under the said Act. Section 14 of the [Arbitration Act](#) on the other hand provides a specific mechanism for challenging an Arbitrator and limits the Court's involvement to a review of a decision of the Arbitral Tribunal. It states that-
  1. Subject to subsection (3), the parties are free to agree on a procedure for challenging an arbitrator.
  2. Failing an agreement under subsection (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the composition of the arbitral tribunal or after becoming aware of any circumstances referred to in section 13 (3), send a written statement of the reasons for the challenge to the arbitral tribunal, and unless the arbitrator who is being challenged withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
  3. If a challenge under agreed procedure or under subsection (2) is unsuccessful, the challenging party may, within thirty days after being notified of the decision to reject the challenge, apply to the High Court to determine the matter.
  4. On an application under subsection (3), the arbitrator who was challenged shall be entitled to appear and be heard before the High Court determines the application.
  5. The High Court may confirm the rejection of the challenge or may uphold the challenge and remove the arbitrator.
  6. The decision of the High Court on such an application shall be final and shall not be subject to appeal.
  7. Where an arbitrator is removed by the High Court under this section, the court may make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.



8. While an application under subsection (3) is pending before the High Court, the parties may commence, continue and conclude arbitral proceedings, but no award in such proceedings shall take effect until the application is decided, and such an award shall be void if the application is successful.
24. It is however noteworthy that Section 22 of the NCIA Act provides that the decision of the NCIA Arbitral Court on disputes referred to it are final and binding. It states as follows-
  1. The Court shall hear and determine all disputes referred to it in accordance with this Act, the rules or any other written law.
  2. A decision of the Court in respect of a matter referred to it shall be final.
25. The *Nairobi Centre for International Arbitration Act* operates as specialized legislation governing institutional arbitration under the Nairobi Centre for International Arbitration framework. From the application herein and the responses filed, it is apparent that the applicant lodged its removal request under the Nairobi Centre for International Arbitration Rules, and the decision rejecting the challenge was rendered by the Registrar of the Nairobi Centre for International Arbitration, rather than the Arbitral Tribunal. This distinction is material.
26. I am inclined to agree with the respondent that a Registrar acting under the *Nairobi Centre for International Arbitration Act* is not an Arbitral Tribunal as contemplated under Section 14 of the *Arbitration Act*. As such, a challenge decided under Rule 11 of the Nairobi Centre for International Arbitration Rules, is not a decision of an Arbitral Tribunal capable of triggering this Court's jurisdiction under Section 14(3) of the *Arbitration Act*.
27. Additionally, Section 3 of the *Nairobi Centre for International Arbitration Act* provides that –

Where there is any conflict or inconsistency between this Act and the provisions of any other Act in matters relating to the purpose of this Act, this Act shall prevail.
28. Bearing the above provisions in mind, since Section 22 of the *Nairobi Centre for International Arbitration Act* expressly provides for finality of decisions on challenges made under the NCIA framework, this Court is constrained by Statute from entertaining an appeal, review, or parallel challenge against a decision rendered under the Nairobi Centre for International Arbitration Rules.
29. The Supreme Court in the oft cited case of Synergy Industrial Credit Limited v Cape Holdings Limited (supra) held as follows-

We have no doubt in our minds that just like article 5, section 10 of our *Arbitration Act* is meant to ensure that the judicial process will only be resorted to where the Act so provides and only within the parameters provided. For example, once an arbitrator has made an award, the Act provides that the only way of challenging that award is through an application for setting it aside and only on the grounds narrowly subscribed.
30. Consequently, and guided by the statutory limitations in Section 10 of the *Arbitration Act* and Sections 3 & 22 of the *Nairobi Centre for International Arbitration Act*, this Court finds that it lacks the requisite jurisdiction to entertain the instant application insofar as it seeks removal of the Arbitrator or review of the Registrar's decision.



**Whether the Arbitrator in the aforesaid arbitral proceedings, Hon. Mr. Bwalya Lumbwe, should be removed from the Arbitral Tribunal.**

31. As already found in this Ruling, the applicant's request for removal of the Arbitrator was made under the NCIA framework, and the resulting decision was rendered under Rule 11 of the NCIA Arbitration Rules. Section 22 of the NCIA Act provides that such decisions are final. Therefore, the High Court has no appellate or supervisory jurisdiction to revisit that determination. It can also not assume original jurisdiction to remove an Arbitrator in the absence of a decision by the Arbitral Tribunal under Section 14(2) of the Arbitration Act.
32. In light of the statutory provisions of the Arbitration Act and the NCIA Act, and in the absence of a decision of the Arbitral Tribunal capable of triggering the provisions of Section 14(3) of the Arbitration Act, the prayer for removal of the Arbitrator is not justiciable before this Court and must fail.

**Whether an order for stay of the ongoing arbitral proceedings in NCIA DIS/ARB/16/22 should be granted.**

33. Having found that this Court lacks jurisdiction to entertain the substantive challenge on the removal of the Arbitrator in the arbitration proceedings in NCIA DIS/ARB/16/22, it follows that the prayer for stay of the said arbitral proceedings cannot lie.
34. This Court notes that as was correctly submitted by Counsel for the respondent, Section 14(8) of the Arbitration Act does not assist the applicant, as it merely suspends the taking effect of an award issued during the pendency of an application filed under the provisions of Section 14 of the Arbitration Act. It does not authorize the Court to halt arbitral proceedings or restrain the issuance of an award.
35. In light of the analysis I have made, it is my finding that an order for stay of the ongoing arbitral proceedings in NCIA DIS/ARB/16/22 cannot issue.

**Whether the applicant's statement of defence, documents, and witness statements should be adopted in the arbitral proceedings.**

36. Adoption of pleadings and evidence falls squarely within the management of arbitral proceedings as provided for under Section 26(b) of the Arbitration Act and Rule 15 of the NCIA Arbitration Rules, which states that –

Section 26(b) of the Arbitration Act

--the respondent fails to communicate his statement of defence in accordance with section 24(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

Rule 15 of the NCIA Arbitration Rules

Submission of written statements and documents.

1. Unless the parties have agreed otherwise or on the determination of the Arbitral Tribunal, the parties shall in accordance with paragraphs (2) to (10) submit to the Registrar written statements together with supporting documents.
2. Within fifteen days of receipt of written statement from the Registrar of the formation of the Arbitral Tribunal, the claimant shall send to the Registrar a statement of case setting out in sufficient detail the facts and any contentious issues of law on which the claimant relies,



together with the relief claimed against all other parties, except that and in so far as such matters have not been set out in its request for arbitration.

3. Within fifteen days of receipt of the statement of case or written notice from the claimant that it elects to treat the request for arbitration as its statement of case, the respondent shall send to the Registrar a statement of defence setting out in sufficient detail which of the facts and contentions of law in the statement of case or request for arbitration, as the case may be, it admits or denies, on what grounds and on what other facts and contentions of law it relies.
  4. Any counterclaims shall be submitted with the statement of defence in the same manner as claims are to be set out in the statement of case.
  5. Within fifteen days of receipt of the statement of defence, the claimant shall send to the Registrar a statement of reply which, where there are any counterclaims, shall include a defence to counterclaim in the same manner as a defence is to be set out in the statement of defence.
  6. If the statement of reply contains a defence to counterclaim, within fifteen days of its receipt, the respondent shall send to the Registrar a statement of reply to counterclaim.
  7. A statement referred to in this rule shall be accompanied by copies or, if they are voluminous, lists of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and, where appropriate, any relevant samples and exhibits.
  8. The Registrar shall forward a file to the Arbitral Tribunal containing all statements referred to in this rule as soon as is practicable to do so, provided that the parties have complied with the directions by the Registrar under rule 26.
  9. As soon as possible, following receipt of a file under subparagraph (8), the Arbitral Tribunal shall proceed in a manner as has been agreed in writing by the parties or pursuant to its authority under these Rules.
  10. Where the respondent fails to submit a statement of defence or the claimant fails to submit a statement of defence to a counterclaim, or where at any point a party fails to avail himself of the opportunity to present his case in the manner specified under paragraphs 15(2) to 15(7) or directed by the Arbitral Tribunal, the Arbitral Tribunal may proceed with the arbitration and make an award.
37. From a reading of the foregoing provisions, I am persuaded that they vest the Arbitral Tribunal with exclusive discretion on such procedural matters. Further, this Court has already found that pursuant to the provisions of Section 10 of the *Arbitration Act*, this Court's interference in the conduct of arbitral proceedings is limited to instances only provided for under the *Arbitration Act*. Upon examination of the *Arbitration Act*, it is noteworthy that there is no provision empowering Courts to admit documents or direct a Tribunal on how to conduct its proceedings.
38. Moreover, a request to review or set aside procedural decisions of a Tribunal or Registrar is under the NCIA framework, within the jurisdiction of the Arbitral Court established under Section 21 of the NCIA Act.
39. In the circumstances, this Court lacks the requisite jurisdiction to substitute its views for those of the Arbitral Tribunal on matters of case management.
40. As a result, an order directing the Arbitral Tribunal to adopt the applicant's statement of defence, documents, and witness statements in the arbitral proceedings cannot issue for want of jurisdiction.



41. This Court finds that the respondent's Notice of Preliminary Objection dated 19<sup>th</sup> September 2023 is merited, whereas the applicant's application dated 11<sup>th</sup> September 2023 is devoid of merits. I make the following orders–

- i. The respondent's Notice of Preliminary Objection dated 19<sup>th</sup> September 2023 is hereby upheld;
- ii. The applicant's application dated 11<sup>th</sup> September 2023 is hereby dismissed; and
- iii. Costs of the application and the Notice of Preliminary Objection are awarded to the respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 19<sup>TH</sup> DAY OF DECEMBER 2025.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:-

Mr. Ogutu h/b for Mr. Waioto for the applicant

Ms Muthemba for the respondent

Ms B. Wokabi – Court Assistant.

**NJOKI MWANGI, J.**

