



County Assembly of Transzoia v Arprim Consultants Limited & 2 others (Miscellaneous Civil Application E066 of 2025) [2026] KEHC 498 (KLR) (27 January 2026) (Ruling)

Neutral citation: [2026] KEHC 498 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
MISCELLANEOUS CIVIL APPLICATION E066 OF 2025
RK LIMO, J
JANUARY 27, 2026**

BETWEEN

COUNTY ASSEMBLY OF TRANSNZOIA APPLICANT

AND

ARPRIM CONSULTANTS LIMITED 1ST RESPONDENT

**PRESIDENT ARCHITECTURAL ASSOCIATION OF KENYA 2ND
RESPONDENT**

ARCHITECT JULIUS MUTUNGA 3RD RESPONDENT

RULING

1. The applicant herein moved this court vide a Misc. Application dated 6/8/25 under Section 13 and 14 of [Arbitration Act](#) challenging the appointment of the 3rd respondent as a sole arbitrator. The main ground raised is that the appointment violates principles of natural justice, impartiality and infringes section 12 of the [Arbitration Act](#) because the 2nd respondent unilaterally appointed the 3rd respondent as an arbitrator without the consent, consultation or participation of the applicant. The applicant also cites procedural fairness as the basis of their application.
2. The 1st respondent has filed a preliminary objection dated 25/8/25 to the application which preliminary objection is now the subject of this ruling. In the said preliminary objection, the 1st respondent lists the following grounds namely;
 - i. That this court lacks jurisdiction to entertain this matter in light of section 14 of the [Arbitration Act](#) 1995 (as amended) which provides for a specific procedure for challenging the jurisdiction of an arbitral tribunal and/or the appointment of an arbiter.



- ii. That the issues raised by the applicant in the present proceedings are subject to an arbitration agreement and fall squarely within the purview of matters to be determined by the arbitral tribunal in the first instance.
- iii. That the applicant has failed to comply with the procedure prescribed under section 14 of the Arbitration Act including requirement that any challenge to the jurisdiction and composition of the arbitral tribunal be determined by the tribunal itself before seeking recourse to the High Court.
- iv. That the filing of the current suit is premature, irregular and an abuse of court process.

The 1st respondent on those grounds seeks to have the application struck out for want of jurisdiction.

3. In its written submissions dated 26/9/25 done through learned counsel Amadi & Amadi Advocate, the 1st respondent contends that section 14 of the Arbitration Act (herein after to be referred to as the Act for ease of reference) sets out exclusive procedure for challenging the jurisdiction of an Arbitral Tribunal or the appointment of an arbitrator.
4. It further submits that parties are bound by valid arbitration agreement and that the issues raised by the applicant in this matter fall squarely within the scope of agreement required to be determined by arbitral tribunal in the 1st instance. He relies on the provisions of section 17 of the Act which in its view grants the arbitral tribunal the authority to rule on its own jurisdiction.
5. It submits that a party must challenge the composition or impartiality of an arbitrator before the tribunal itself within 15 days of becoming aware of the relevant facts and cites the provisions of section 14(2) of the Act to back up its contention and that under section 14(3) of the Act it is only after tribunal has rejected the challenge, that the aggrieved party may move to High Court within 30 days.
6. It is the 1st respondent's contention that in the absence of a challenge before the arbitrator this court has no jurisdiction to entertain issues of bias. The 1st respondent faults the applicant for bypassing a statutory mechanism and thus rendering its application procedurally flawed and legally untenable. It relies on the decision in *Africare Ltd –vs- Sitafalwalla & Anor* (Commercial Arbitration Cause No.E084 of 2023)(2024) KEHC 7268 where the court held that a question of bias must first be raised with the arbitrator and that the challenge must follow the procedure in section 14 of the Arbitration Act.
7. The 1st respondent contends that the applicant has not invoked any of the specific avenues in the Act for court's intervention. According to the 1st respondent the application before court is premature, irregular and incompetent.
8. The applicant has opposed the preliminary objection raised. According to the applicant there is no valid arbitration agreement between it and the 1st respondent to form a basis of appointment of an arbitrator.
9. The applicant contends that the tender awarded was for consultancy for architectural design of the County Assembly Complex and that the tender was restricted to consultancy. That the agreement signed by parties went beyond the scope of the Tender as per Clause 100.23.
10. The applicant contends that the Conference Centre, Speaker's House and Clerk's House were not contained in the Trans-Nzoia County Government Planning Document or in the County Annual Budget for 1018-2019 Fiscal Year and that by going beyond the scope of Tender as advertised, the agreement in its view is unenforceable as it infringes the provisions of section 104 of the County



- Government Act No.17 of 2013 which provides that no public funds shall be appropriated outside a planning framework developed by County Executive Committee and approved by County Assembly.
11. It further cites the provisions of section 44(1) (2) (a) of the Public Procurement and Asset Disposal Act No.33 of 2015 which provides that procurement of goods, works and services of the public entity shall be within the approved budget of that entity.
 12. It is its case that the inclusion of a Conference Center, Speaker’s House and Clerk’s House in the agreement dated 26/3/2019 renders the agreement null and void because the projects were neither contained in the County Integrated Development Plan, the County Annual Development Plan or in the County Annual Budget for 2018-2019 Financial Year.
 13. The applicant further contends that such capital projects could not be implemented without compliance with section 115 of the County Government Act which requires the input of public participation.
 14. The applicant faults the impugned agreement for violating public policy and being marred with illegalities. It relies on the case of Njogu & Company Advocates –vs- National Bank of Kenya (2016)eKLR which found that arbitral awards conflicting with public policy may be set aside and arbitration process cannot proceed on an illegal foundation. It also relies on Patel –vs- Singh (2) (1987) KLR 585 where the court held that a contract entered into was contrary to provisions of section 3(1) of Exchange Control Act was illegal ab initio and unenforceable.
 15. The applicant further submits it is a government within the meaning of Public Authorities *Limitation of Actions Act* and that under section 3(2) an action founded on contract may not be brought against the Government after 3 years. That even if it was an ordinary contract, section 4(1) of Limitation Act provides a limitation period of 6 years. The applicant contends that the 1st respondent’s action was time barred.
 16. The applicant further submits that the procedure for appointment of an arbitrator as provided under section 12 was not complied with and that the 3rd respondent did not reveal his qualification after it challenged his appointment. It submits that it has justifiable doubts about the impartiality and independence of the 3rd respondent as an arbitrator.
 17. It submits that this court has jurisdiction to prevent the respondents from venturing into a process that is clearly illegal ab initio and that section 10 of the Act presupposes the existence of a valid arbitration agreement which to them is lacking in this matter.
 18. This court has considered the grounds raised in the preliminary objection and the response raised. The singular issue for determination is whether this court has jurisdiction to determine the dispute or the issues raised in the subject application dated 6/8/25.
 19. The jurisdiction of this court is donated either by Statute or *the Constitution*. That is now well settled. It is also true as observed by Nyarangi J.A in the Owners of the Motor Vessel “Lilian S” (supra) that jurisdiction is everything and without it a court has no power to make one more step. The court held as follows;

“Jurisdiction means the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute charter or commission under which the court is constituted..... if no restrictions or limit is imposed, the jurisdiction is said to be unlimited”.



20. In Odera T/A AJ Odera & Associates –vs- Machira t/a Machira & Co Advocate (Civil Appeal NO.161 of 1999 (2013) KECA 208 (KLR) (11th October 2013), the Court of Appeal inter alia made the following observations;

“Where there is a law prescribed by either a Constitution or an Act of Parliament governing a procedure for redress of any particular grievance that procedure should be strictly followed”.

21. It is not disputed that an agreement exists between the applicant and the 1st respondent. The agreement is exhibited by the applicant in the subject miscellaneous application filed herein as exhibit LMW 2 (or annexure 1). Whether the impugned agreement is legal or binding is a different matter altogether which is not subject to the issue at hand at the moment.

22. This court has had a cursory look at the contract agreement and finds that the applicant and the 1st respondent entered into some form of arbitration agreement as stipulated under section 4 of the Act because of the arbitration clause under Clause 31.4 of the Contract Agreement.

23. The main ground raised in the subject application is the appointment of an arbitrator by the 2nd respondent. The applicant contends that it was unilateral and procedurally unfair. The provisions of section 13 of the Act provides as follows;

1. When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.
2. From the time of his appointment and throughout the arbitral proceedings, an arbitrator shall without delay disclose any such circumstances to the parties unless the parties have already been informed of them by him.
3. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality and independence, or if he does not possess qualifications agreed to by the parties or if he is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so.
4. A party may challenge an arbitrator appointed by him, or in whose appointment that party has participated, only for reasons of which he becomes aware after the appointment.

The provisions of section 12 provide for the process of appointment of arbitrator and section 13 as seen above provides for grounds to challenge the appointment. The procedure for challenge is well provided under section 14 which provides;

1. “Subject to subsection (3), the parties are free to agree on a procedure for challenging an arbitrator.

2.

- (2) Failing an agreement under subsection (1), a party who intends to challenge an arbitrator shall, within 15 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.

(3) If a challenge under agreed procedure or under subsection (2) is unsuccessful, the challenging party may, within 30 days after being notified of the decision to reject the challenge, apply to the High Court to determine the matter.”

24. The statute clearly provides that the first point of call for an aggrieved party challenging the process and/or appointment of an arbitrator is the same Arbitral Tribunal under section 14(2) of the Act and where a party is aggrieved by the decision of the Arbitral Tribunal, then as provided under section 14(3) he can then approach this court to determine the objection. To that extent therefore the Act clearly ousts the jurisdiction of this court in the first instance. The parties to the arbitration clause are bound by the terms of the contract agreement they executed voluntarily.

25. The question of whether the contract agreement went beyond the scope of what the applicant could legally contract is an issue that should be resolved in the manner provided under the agreement and any aggrieved party to any decision by Arbitral Tribunal can then move this court under section 14(3) of the Act on whatever ground.

In the premises, this court finds that the Miscellaneous Application filed herein is premature to the above extent and therefore the preliminary objection dated 25/8/25 is well grounded and is sustained. The Miscellaneous Application is hereby struck out with costs to the respondent.

DELIVERED, DATED AND SIGNED AT KITALE THIS 27TH DAY OF JANUARY , 2026.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Ruling delivered in open court

In the presence of

Ngeiywa for the applicant

M/s Ndugire holding brief for Ambani for the respondents

Duke/Chemosop- Court assistants

