



REPUBLIC OF KENYA



Kingsway Business Systems Limited v Kobby Technologies Limited (Miscellaneous Application E687 of 2022) [2026] KEHC 1015 (KLR) (Commercial and Tax) (29 January 2026) (Ruling)

Neutral citation: [2026] KEHC 1015 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E687 OF 2022**

**MA OTIENO, J
JANUARY 29, 2026**

BETWEEN

KINGSWAY BUSINESS SYSTEMS LIMITED APPLICANT

AND

KOBBY TECHNOLOGIES LIMITED RESPONDENT

RULING

Introduction

1. Before Court for determination is the Respondent's Preliminary Objection dated 20th May 2024, challenging this Court's jurisdiction to deal with the Applicant's Notice of Motion application dated 22nd April 2022 and the entire suit.
2. The background of the dispute is that following a dispute under a Sub-Contracting Agreement dated 7th March 2021, the parties, pursuant to Clause 19 of the agreement, referred the dispute to a sole arbitrator who, on 26th August 2022 (later amended on 17th October 2022), published a final award.
3. Aggrieved by the award, the Applicant, on 22nd September 2022, filed Miscellaneous Application No. E687 of 2022 seeking to set aside the arbitral award under section 35 of the *Arbitration Act*. The Respondent, on its part, filed another application, being Arbitration Cause No. E063 of 2022 seeking recognition and enforcement of the same award.
4. Before the applications could be heard, the Court file in Miscellaneous Application No. E687 of 2022 (for setting aside the arbitral award) went missing, prompting the Applicant to file an application dated 22nd April 2024 for reconstruction of the file, which application was allowed by consent. In the meantime, the Respondent's application for the recognition of the arbitral award (in Misc. Arbitration Cause No. E063 of 2022) was heard and a ruling delivered by this Court (P. Mulwa J) allowing the same.



5. Dissatisfied with the Court's decision, the Applicant lodged Civil Appeal No. E573 of 2024 against the same, which is presently pending before the Court of Appeal.
6. Following the delivery of the Ruling in Misc. Arbitration Cause No. E063 of 2022 recognizing the arbitral award and subsequent appeal by the Respondent, the Respondent filed the instant preliminary Objection in Miscellaneous Application No. E687 of 2022, on the principal grounds that this Court lacks jurisdiction to entertain the Applicant's application to this Court for setting aside the arbitral award.
7. The matter proceeded by way of written submissions. The Respondent in support of the objection filed its submissions dated 20th May 2025, whilst the Applicant's in opposition of the same filed its submissions dated 29th July 2024.

Analysis and Determination

8. Having considered the Respondent's Objection and the Parties' respective submissions in relation thereto, I find the sole issue for determination is whether the preliminary objection is merited.
9. It is settled law that a preliminary objection must raise a pure point of law. In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* [1969] EA 696, Law JA held that a preliminary objection consists of a pure point of law which, if argued, may dispose of the suit.
10. In the present case, the objection raised by the Respondent relates to the jurisdictional competence of this Court to deal with the Applicant's Notice of Motion application dated 22nd April 2022 seeking to set aside the arbitral award. Jurisdictional objections are purely questions of law. Consequently, the Respondent's objection is therefore properly before the Court.
11. The scope of judicial intervention in arbitral proceedings is deliberately narrow. Under Section 10 of the *Arbitration Act*, no court shall intervene in matters governed by the Act except as provided therein.
12. Further, Section 32 of the Act is clear that, "except as otherwise agreed by the parties, an arbitral award is final and binding upon the parties to it, and no recourse is available against the award otherwise than in the manner provided by this Act."
13. The restriction on the jurisdiction of this Court on arbitral matters is founded on the fact that arbitration arises purely as a matter of agreement between parties when parties agree, upfront, that their disputes will be settled by an arbitrator, and not by the national courts. The parties also agree to accept the arbitrator's view of the facts and the meaning of the contract between them. For this reason, courts will not sit to hear the claims of factual or legal error by an arbitrator as an appellate court does in reviewing decisions of lower courts. This is the party autonomy that is embedded in the *Arbitration Act*. However, the phrase "except as otherwise agreed" employed under Section 32A permits parties to adopt additional mechanisms, but it does not negate statutory recourse under Section 35.
14. In *Synergy Industrial Credit Limited v Cape Holdings Limited* [2019] eKLR (Supreme Court, Petition No. 2 of 2017), the Court reiterated that party autonomy is central to arbitration but must be balanced against statutory safeguards. The Court recognized that the *Arbitration Act* is a complete code but did not hold that parties can contract out of section 35.
15. The Supreme Court in *Synergy Industrial Credit* (supra) was clear that the purpose of section 35 of the Act was to ensure that courts were able to correct specific errors of law, which, if left alone, would lead to a miscarriage of justice. It therefore follows that even in promoting party autonomy, which is the core tenet of arbitration, the same should not be at the expense of real and substantive justice.



16. Applying the above principles to the present case, Clause 19.8 of the Sub-Contracting Agreement dated 7th March 2021 provides as follows:

“ A party shall be entitled to appeal against the award of the arbitrator in terms of relevant arbitration rules relating to appeals, provided that the appeal shall be heard before a panel of three arbitrators, one of whom shall be appointed by each of the parties, and the third by agreement between them or, failing agreement within seven days of the appeal being lodged, by a person appointed by the Chairperson of the Chartered Institute of Arbitrators.”

17. From the above, it is clear that Clause 19.8 of the Agreement is specific that an arbitral appellate mechanism should be before a panel of three arbitrators. Properly construed, this clause supplements recourse, but does not oust statutory jurisdiction. It is the Court’s firm view that, given the statutory scheme of the *Arbitration Act*, Parties may agree to arbitral appeals, but they cannot, by such an agreement, oust the operation of Section 35 of the Act.

18. As pointed out in the preceding paragraphs of this Ruling, Section 35 of the *Arbitration Act* is a mandatory safeguard ensuring that awards comply with minimum standards of fairness and public policy. To interpret Clause 19.8 as an ouster would therefore contradict the constitutional supervisory jurisdiction of the High Court under Article 165 of *the Constitution*.

19. In the premises, this Court is satisfied that the Respondent’s preliminary objection, though properly raised as a pure point of law, is devoid of merit.

20. However, in view of the fact that there is currently a pending appeal being Civil Appeal No. E573 of 2024, in which the Court of Appeal is already seized of the jurisdictional and procedural questions intertwined with this matter, it is prudent, in the interests of judicial comity and efficiency, to stay further proceedings herein pending the outcome of the appeal.

21. Accordingly, the Respondent’s preliminary objection dated 20th May 2024 is hereby dismissed.

22. In view of the pendency of Civil Appeal No. E573 of 2024, further proceedings in Miscellaneous Application No. E687 of 2022 shall be stayed pending the hearing and determination of the said appeal, or until further orders of this Court upon application by any party.

23. The costs of the preliminary objection shall be in the cause.

24. It is so ordered.

SIGNED, DATED, AND DELIVERED IN VIRTUAL COURT THIS 29TH JANUARY 2026

ADO MOSES

JUDGE

In the presence of: -

C/A – Moses

Mtange.....for the Applicant

Ms. Mwangi..... for the Respondent

