



Miles Construction Limited v Meru National Polytechnic (Civil Case E019 of 2025) [2026] KEHC 1004 (KLR) (29 January 2026) (Ruling)

Neutral citation: [2026] KEHC 1004 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL CASE E019 OF 2025
HM NYAGA, J
JANUARY 29, 2026**

BETWEEN

MILES CONSTRUCTION LIMITED APPLICANT

AND

THE MERU NATIONAL POLYTECHNIC RESPONDENT

RULING

1. The plaintiff commenced this suit vide a plaint dated 29/8/2025. It sought the following prayers:
 - a. A permanent injunction against the defendant barring them from blocking the plaintiff from accessing the site.
 - b. An order of specific performance directed at the defendant to allow the plaintiff to proceed with the works as per the contract KE-MERUPOLY-236756-CW-RFB.
 - c. A permanent injunction against the defendant barring it from advertising the site for bidding to other contractors.
 - d. Costs of the suit
 - e. Any other or further relief that this honourable court may deem fit.
2. Contemporaneously, the plaintiff filed an application of even date, under certificate of urgency in which it sought the following prayers:
 - a. spent
 - b. That this Honourable Court do issue an interim injunction against the respondent barring them from interfering with the site and the contractor pending the hearing and determination of this application.



- c. That this Honourable Court do issue an interim injunction barring the respondent from advertising the site pending the hearing and determination of this application.
 - d. That this Honourable Court do issue an interim injunction against the respondent barring them from interfering with the work of the contractor on the site pending the hearing and determination of this application.
 - e. That upon hearing and determination of this application this Honourable Court do issue an interim injunction against the respondent barring them from advertising or interfering with the site pending the hearing and determination of the main suit.
 - f. That the costs of this application be borne by the respondent.
3. The court issued ex-parte orders in terms of prayer No. 2 of the said application and directed that the said application be served upon the respondent.
 4. The defendant then filed a notice of preliminary objection dated 17/9/2025 and its own application in which it sought to have the ex-parte orders issued herein be discharged. The plaintiff also filed another application seeking to have the defendant cited for contempt of the court orders issued.
 5. When the matter came up for directions, it was directed that the preliminary objection be heard first, as it ought to, since it challenged the jurisdiction of the court.
 6. The preliminary objection is premised on the following grounds
 - a. The jurisdiction of this Honourable court has been improperly invoked by the institution of a fresh suit, instead of proceedings in the manner and form prescribed under the [Arbitration Act](#) 1995 for recognition enforcement or challenge of an arbitral award.
 - b. In accordance with section 32A of the [Arbitration Act](#), this Honourable Court is divested of jurisdiction to entertain the present suit which is incompetent, irregular and an abuse of the court process.
 7. The preliminary objection was argued by way of written submissions.
 8. For the defendant it was submitted that the plaintiff is out to achieve what the [Arbitration Act](#) expressly forbids. That rather than pursuing the specific avenues provided under sections 35 36 and 37 of the [Arbitration Act](#) to set aside, recognize or enforce the award, the plaintiff has filed a fresh suit, inviting this Court to revisit and in effect reopen or vary the award by reading new provisions, interpretations and findings into it that were never reflected in the final award.
 9. It was further submitted that from the plaintiff's own pleadings, it was clear that the issues forming the subject of this suit were substantively considered and conclusively determined by a duly constituted arbitral tribunal. That the award of the said tribunal has never been the subject of any enforcement or setting aside proceedings as contemplated under the Act. That the suit offends the provisions of section 32 of the Act whose contents are clear, and allowing it to proceed would erode the principle of party autonomy and finality of arbitration proceedings.
 10. In support of its submissions, the defendant cited the case of Synergy Industrial Credit Limited vs Cape Holdings Limited (2019) KESC 12 (KLR) where the Supreme Court affirmed the finality of arbitral awards and underscored the narrow confines of judicial intervention in arbitration matters. That where the parties have chosen arbitration as their preferred mode of dispute resolution they must be taken to have accepted that the decision of the arbitral tribunal would be final and judicial interference would



be limited strictly to the instances provided under the Act. That to allow any other form of challenge would be to defeat the very essence and objective of the arbitration.

11. Also was the decision in *Nyutu Agrovet Limited versus Airtel Networks Kenya Limited and another* (2015) eKLR where the Supreme Court observed that section 10 of the *Arbitration Act* restricts the court to what is specifically provided under the Act and warned that any additional interference would undermine the autonomy of the arbitral process.
12. It was submitted that from the foregoing reasons, this court lacks the jurisdiction to entertain the suit.
13. For the plaintiff, it was submitted that the contract between the parties provided for arbitration. That the parties entered into a consent award. That thereafter, the defendant reneged on the consent by denying the plaintiff access to the site to collect its belongings and even employed force to evict it from the premises without its tolls of trade. That the defendant further refused to refund the Ksh. 15,242,074/= retention monies paid for the project that was unlawfully stalled at the defendant's behest.
14. The plaintiff maintains that this court has the requisite jurisdiction to hear the suit. That the suit meets the threshold under section 36 of the Act and none of the provisions under section 37 that would lead to the suit being struck out. That even if the court was to find that there is want of form in the plaintiff's suit the same ought not to be dismissed on grounds of procedural technicalities. Cited in support of this submission was *Harun Ntoruru Nason vs Mwenda Nabea Ikwinga* [2012] KEHC 1609 (KLR).
15. The parameters as to what constitutes a preliminary objection were expressed in the well-known case of *Mukisa Biscuits Manufacturing Ltd vs West End Distributors Ltd* (1969) EA 696 as follows:

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
16. In *Oraro vs Mbaja* 2005 1 KLR 141 the court described a preliminary objection as follows;

“A ‘Preliminary Objection’, correctly understood, is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. Any assertion which claims to be a Preliminary Objection and yet it bears factual aspects calling for proof, or seek to adduce evidence for its authentication is not, as a matter of legal principle, a true Preliminary Objection which the Court should allow to proceed.”
17. On the same issue, in *Avtar Singh Bhamra & Another vs Oriental Commercial Bank*, Kisumu High Court Civil Case NO. 53 of 2004, the Court held that:

“A Preliminary Objection must stem or germinate from the pleadings filed by the parties and must be based on pure points of law with no facts to be ascertained.”
18. It goes without saying that a question of jurisdiction is a valid point for determination as a preliminary objection.
19. It is also well settled law that where a challenge to the court's jurisdiction is raised, then the said challenge has to be resolved before the court can delve into any other issue. If the court is to find that it



has no jurisdiction, then it has no option but to down its tools, as it well reiterated in Owners of Motor Vessel Lilian S vs Caltex Oil Kenya Ltd (1989) KLR 1.

20. The defendant's case is simply that instead of pursuing the process set out under sections 35 to 37 of the *Arbitration Act*, the plaintiff has chosen to file a fresh suit which re-opens the award by bringing new interpretation that were never reflected in the final award.
21. For the plaintiff, its case is simply that the suit is premised upon section 36 of the *Arbitration Act*. That the suit was brought after the respondent vitiated the award and barred it from the site to get its materials.
22. It is interesting to note that the parties herein had been before this court before, with their roles reversed. In High Court Civil Suit No. E029 of 2024, the defendant commenced suit against the plaintiff and sought a number of orders. In the ruling delivered on 11th March 2025, this court found that it had jurisdiction to only deal with interim protection measures as set out under section 7 of the Act and it could not delve into the substantive matters due to the Arbitration clause in the contract between the parties. The court issued the interim protection orders and referred the parties to Arbitration.
23. It is mutually agreed that the parties proceeded for arbitration and an award was made, albeit by consent.
24. I am in total agreement with the defendant that once parties have opted to settle the dispute between themselves through arbitration, then this court's role is limited only to matters set out in the Act. The court cannot delve into the subject matter that was the subject of the arbitration and the subsequent award.
25. With the above in mind, I have looked at the manner in which the suit is framed. The plaintiff claim, among other issues, is that after the arbitral award was made the defendant proceeded to deny it access to the site and locked its tools of trade and materials. I am unable to interpret it as an attempt to enforce the arbitral award which was silent on the issue.
26. The other issue is in respect to the retention monies allegedly held by the defendant. In my view this issue cannot be revisited by the court in this suit, for reasons given hereinabove.
27. It is thus my view that while the issue of the arbitral award is determined and cannot be revisited by this court, the other prayers sought appear to fall outside what the arbitration had dealt with. The consent order does not, for instance take account some of the issues now raised in the suit, like access to the site by the plaintiff to collect its equipment.
28. A preliminary objection ought to be based on pure points of law and if issues of facts arise, then it ceases to be a preliminary objection.
29. I am of the opinion that the court will have to delve into substantive issues to determine whether the plaintiff is rightly before court or not. This is not an issue that can be dealt with as a preliminary objection. Whether the suit will be successful or not is a different issue altogether.
30. Having found that the preliminary objection's determination involves a look at matters of facts that may be contested, the preliminary objection is overruled but there shall be no orders as to costs.
31. Directions will be given on the pending applications herein after the delivery of this ruling.

DATED, SIGNED AND DELIVERED AT MERU THIS 29TH DAY OF JANUARY 2026.

H. M. NYAGA



JUDGE

