



Elvince Electrical Company Limited v Gateway Clean Energy Africa Ltd & another (Civil Appeal E041 of 2024) [2026] KEHC 1268 (KLR) (Civ) (12 February 2026) (Judgment)

Neutral citation: [2026] KEHC 1268 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CIVIL
CIVIL APPEAL E041 OF 2024
KW KIARIE, J
FEBRUARY 12, 2026**

BETWEEN

ELVINCE ELECTRICAL COMPANY LIMITED APPELLANT

AND

GATEWAY CLEAN ENERGY AFRICA LTD 1ST RESPONDENT

CP POWER EAST AFRICAN LTD 2ND RESPONDENT

(Being an Appeal from the ruling and order in Ol Kalou Principal Magistrate's Civil Cause No. E089 of 2024 by Hon. J.N. Nthuku –Principal Magistrate.)

JUDGMENT

1. On the 28th day of November 2024, Hon. J.N. Nthuku delivered a ruling on a preliminary objection that the respondents raised. She allowed the application and struck out the suit. The appellant was aggrieved by the said ruling and filed this appeal. The firm of Waichungo Martin & Company Advocates represented her. The appellant raised the following grounds of appeal:
 - a. The learned trial magistrate erred in law and in fact in failing to find that the parties had attempted arbitration as per the arbitration clause provided for in the agreement dated 19th July 2021.
 - b. The learned trial magistrate erred in law and in fact in finding that the court did not have jurisdiction to hear and determine the suit despite the arbitration of the Power Line Contractors Association having failed to bear fruit.
 - c. The learned trial magistrate erred in law and in fact in failing to find that there was already a judgment in default of appearance and defence on record against the respondents and the respondents had not sought to have the judgment set aside.



- d. The learned trial magistrate erred in law and in fact in striking out the suit, whereas the respondents in their notice of preliminary objection and the notice of motion dated 17/9/2024 had sought a stay of the suit.
2. Musungu, Miriti & Advocates acted as legal representatives for the respondents. The appeal was opposed on these specific grounds:
 - a. The trial court had no jurisdiction to entertain the suit.
 - b. That staying the suit could not have served any purpose.
3. This Court is the first appellate court. I know my duty to evaluate the entire evidence on record, bearing in mind that I had no advantage in seeing the witnesses testify or in observing their demeanour. I will be guided by the pronouncements in the case of *Selle vs Associated Motor Boat Co. Ltd.* [1965] E.A. 123, where it was held that the first appellate court has to reconsider and evaluate the evidence that was tendered before the trial court, assess it and make its conclusions in the matter.
4. The relevant part of Clause 19.2 of the Subcontractor Agreement on Installation Works between the parties provides:

..in the event of a dispute between the parties shall be resolved by Arbitration in the Republic of Kenya in accordance with the provisions of the *Arbitration Act*, 1995 by one or more arbitrators appointed by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch on the application of either party. The language shall be English. Each party shall bear its own cost of preparing its case. The costs of arbitration (including fees and costs of arbitrators) shall be shared equally between the parties.
5. The parties had agreed to resolve disputes through arbitration, as outlined in the mandatory terms. The learned trial magistrate acknowledged this agreement and determined she lacked jurisdiction to hear the case. The Court of Appeal discussed the issue of jurisdiction in *Owners of the Motor Vessel "Lillian S" vs. Caltex Oil (Kenya) Ltd* [1989] KLR 1 (Nyarangi JA), stating the following:

I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity, and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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.
6. In this case, the learned trial magistrate did what was expected of her and cannot be faulted.
7. The appellant contended that she ought to have stayed the suit. Section 6 of the *Arbitration Act* provides as follows:
 - (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.
8. The parties' agreement was binding, and the appellant should have relied on it rather than going to court for dispute resolution. No party had made an application under subsection (1). Additionally, the opportunity to raise the preliminary objection remained open. Therefore, even if the court had granted a stay of the suit, it would not have made any difference.
9. I find that the appeal lacks merit, and it is dismissed with costs.

DELIVERED AND SIGNED AT NYANDARUA, THIS 12TH DAY OF FEBRUARY 2026

KIARIE WAWERU KIARIE

JUDGE

