



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYANDARUA**  
**CIVIL CASE NO. E004 OF 2025**

**BETWEEN**

**LUCY NYAMBURA..... PLAINTIFF**

**AND**

**ZIARA DAIRIES LIMITED..... DEFENDANT**

**RULING**

1. The defendant moved the court through a Notice of preliminary objection dated the 5<sup>th</sup> day of August 2025, based on the following grounds:
  - a) That pursuant to the contract entered into between the plaintiff and the defendant on the 1st November, 2023, this court lacks jurisdiction to hear and determine this suit since the contract had an arbitration clause which provides for a dispute resolution mechanism.
  - b) That as a result, no competent suit lies before this honourable court, and the same ought to be struck out.
2. The preliminary objection was contested on the basis that this court has jurisdiction over the dispute.
3. A preliminary objection raises purely issues of law. The Court of Appeal in **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Limited (1969) EA. 696** (Sir Charles Newbold P) observed as follows:

*... A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion, confuse issues. This improper practice should stop.*
4. The defendant has contended that this court lacks jurisdiction to entertain this case. Jurisdiction is an issue of law. The Court of Appeal for Eastern Africa in **Salim vs Shariff Mohamed Shary [1938] KLR 9** stated:

*If a court has no jurisdiction over the subject matter of the litigation, its judgment and orders, however precisely certain and technically correct, are made nullities and not only voidable, they are void and may not only be set aside at any time by the court in which they are rendered but be declared void by every court in which they may be presented. It is well established that jurisdiction cannot be conferred on a court by consent of parties, and any waiver on their part cannot make up for the lack or deficit of jurisdiction.*

5. The dispute between the parties is purportedly within the scope of arbitration. In **Niazsons (K) Ltd v China Road & Bridge Corporation Kenya [2001] eKLR**, the Court of Appeal stated:

*Whether or not an arbitration clause or agreement is valid is a matter the Court seised of a suit in which a stay is sought is duty bound to decide. The aforequoted section does not expressly state at what stage it should do so. However, a careful reading of the section leaves no doubt that the Court must hear that application to come to a decision one way or the other. It appears to me that all an applicant is obliged to do is to bring his application promptly. The Court will then be obliged to consider three basic aspects. First, whether the applicant has taken any step in the proceeding other than the steps allowed by the said section. Second, whether there are any legal impediments on the validity, operation or performance of the arbitration agreement. Third, whether the suit indeed concerns a matter agreed to be referred.*

6. When submitting the preliminary objection, the defendant should have included a copy of the agreement so the court could assess the validity of the arbitration clause. Because this was not provided, the court cannot rule on the issue.
7. The preliminary objection is therefore dismissed with costs.

**Delivered and signed at Nyandarua, this 19<sup>th</sup> day of February 2026.**

**KIARIE WAWERU KIARIE**  
**JUDGE**