



REPUBLIC OF KENYA



**Sichuan Huashi Enterprises Limited v Barter Box Limited (Civil Case E150 of 2025)  
[2026] KEHC 1154 (KLR) (Commercial and Tax) (5 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 1154 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E150 OF 2025  
F GIKONYO, J  
FEBRUARY 5, 2026**

**BETWEEN**

**SICHUAN HUASHI ENTERPRISES LIMITED ..... PLAINTIFF**

**AND**

**BARTER BOX LIMITED ..... DEFENDANT**

**RULING**

**Referral to arbitration**

1. The defendant/ applicant applied through the chamber summons dated 14.3.2025 under Section 6 (1) of the *Arbitration Act* and Rule 2 of the Arbitration Rules, for this dispute to be referred to arbitration in accordance with Clause 45 of the Contract for Construction Services Agreement dated 20<sup>th</sup> May 2022 (the “contract”).
2. The application is supported by the affidavit sworn by the applicant’s director, Simon Saili Malonza on 14.3.2025 and 19.5.2025 and written submissions dated 19.5.2025.
3. The plaintiff/ respondent opposed the application through a replying affidavit sworn by its director, Wang Zianzhong on 9.5.2025 and written submissions dated 11.5.2025.

**Background**

4. The respondent filed a plaint dated 11.2.2025 seeking, inter alia, Kshs. 35,046,986.30 and interest thereon at 16% from 19.4.2023 until payment in full. It also filed an application dated 24.2.2025 seeking entry of judgment on admission.



5. The respondent's case is that it entered contracts for construction services for the proposed Katani II apartments and apartments in Mihango, Utawala dated 20.5.2022 and 18.5.2022 respectively. Under the contracts, it undertook to carry out the works, among other things.
6. On its part, the applicant undertook to confirm that the proposed construction complied with all statutory requirements, permits, approvals, local authority planning and design by-laws and to pay the respondent.
7. The respondent claimed that it advanced the applicant a facility of Kshs. 24,000,000/-, for the purpose of obtaining relevant approvals and permits, which the defendant undertook to repay as part of the preliminary costs. It also claimed that it spent additional amounts towards preliminaries and mobilization before construction began.
8. The respondent submitted payment application no. 1 on 14.3.2023 for Kshs. 35,046,986/-. The project manager issued an interim valuation in the sum of Kshs. 35,046.986.30/- which was presented to the applicant on 5.4.2023.
9. The respondent claimed that the applicant failed to settle the interim valuation. According to the contract, the applicant ought to have honored the certificate within 14 days of presentation, falling on 19.4.2023, or the payment would attract interest until full payment.
10. The applicant filed a memorandum of appearance dated 14.3.2025 under protest.

#### **Applicant's case**

11. In essence, the applicant's case is that the underlying dispute arises from the contract which provides that any dispute between the parties arising out of or in connection with the agreement, including any contractual obligation thereof, claim for monies owed, shall be referred to arbitration.
12. The applicant asserted that the respondent instituted this suit in disregard of the arbitration agreement/ clause. It argued that the court lacks jurisdiction over the dispute. It relied on section 6 (1) of the *Arbitration act* to argue that the court has the mandate to stay the proceedings and to refer the dispute to arbitration. It also asserted that the exceptions under the provision are not applicable to the matter.
13. The defendant relied on *Seyani Brothers & Company (K) Limited v Acme Apartments Limited* [2017] eKLR where the court held that a dispute of non-payment was for referral to arbitration.

#### **Response**

14. The respondent contended that the test under section 6(1) of the *Arbitration act* is not whether there exists an arbitration agreement but whether there is a dispute regarding matters agreed to be referred to arbitration. It relied on *Niazsons (K) Limited v China Road & Bridge Corporation (Kenya)* [2000] LECA 382. It argued that the amount claimed is indisputably due and the applicant's refusal to pay cannot give rise to a dispute triggering the operation of the arbitration clause.
15. The respondent asserted that the court has jurisdiction over the dispute. It also asserted that it would suffer great prejudice if forced to proceed to arbitration just for the sake of it, yet there is no dispute and the amount owing has been admitted.
16. It therefore urged the court to dismiss the application with costs.



## Analysis and Determination

### Issue

17. The applicant seeks stay of these proceedings and the matter to be referred to arbitration.
18. According to the respondent ‘...there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration’.
19. Are these requests merited?

### Legal threshold

20. The court would refuse to order a stay of proceedings or refer a matter to arbitration, if it finds; ‘...that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration’. Section 6(1)(b) of the *Arbitration Act*, *Telkom Kenya Limited v Rapid Communications Limited* 2015 KEHC 7130 (KLR).
21. Section 6(1)(b) of the *Arbitration Act* reinforces the sacrosanct constitutional purpose of arbitration as a method for dispute resolution (art.159(2)(c) of *the Constitution, Arbitration Act* and relevant international instruments) and seeks to avoid abuse of arbitral process ‘by parties whose sole purpose is to delay justice due to the other party.’ From *Here Ventures Fund 1, GP v Lipa Later Limited & another* [2025] KEHC 7263 (KLR)
22. It bears emphasizing the court’s duty to protect alternative justice systems under article 159(2)(c) of *the Constitution*, that ‘...arbitration being consensual process loathes such manoeuvres; instead, should excite obedience; thus, should be shielded from abuse.” From *Here Ventures Fund 1, GP v Lipa Later Limited & another* [ibid]
23. According to the applicant, the underlying dispute ought to be referred to arbitration pursuant to clause 45 of the contract.
24. The respondent takes a different view; that the amount claimed is indisputably due and the applicant’s refusal to pay cannot give rise to a dispute triggering the operation of the arbitration clause.
25. The respondent claimed that by a letter dated 23.6.2023, the defendant clearly, unequivocally and unambiguously admitted to the amount set out in the interim valuation to be owing and undertook to pay the amount within 90 days. It therefore contended that the applicant became liable to pay Kshs. 35,046,986.30/- based on the preliminary works undertaken and the acknowledgement.
26. The applicant argued that the letter does not contain a clear and unequivocal admission of the alleged debt of 35,046,986.30/-. It also argued that the letter does not clearly state the amount of outstanding payments owed to the respondent. It asserted that reference to extrinsic evidence would be required to determine the sum of outstanding statements.
27. The applicant highlighted that the amount claimed through the plaintiff’s letter dated 5.4.2023 arises from an interim valuation certificate issued under the contract and that the final and conclusive determination of what is legitimately due to the respondent can only be made by the arbitrator in exercise of his powers under clause 45.8 of the contract.
28. The respondent lamented that the applicant did not raise any dispute to be referred for arbitration prior to the filing of the suit. It contended that no evidence has been provided by the applicant to justify the existence of a dispute except belated reliance on the arbitration clause.



29. The respondent challenged the applicant's argument that the valuation must be determined by the arbitrator for them to be final and payable. It claimed that that argument is untenable. It also asserted that there exists no such requirement under Clause 34 of the Contracts and that these issues were only raised after the applicant was served with the plaint and the application for judgment on admission.
30. The applicant retorted that Clause 16.1 of the Contract required the plaintiff to provide it with a performance bond equivalent to 10% of the contract price and that no payment would be made to the respondent before the bond had been provided.
31. The applicant went on to state that no such bond was provided to it and that even assuming that any payment was due, which it denied, it is contractually entitled not to make any payment to the respondent.
32. The applicant pointed out the respondent's concession that the construction as envisaged under the contracts never fully commenced. It raised the following questions: -
1. If the construction envisaged in the contracts never fully commenced, to what extent did it commence if at all?
  2. In absence of a final certificate for contracts that the respondent considers terminated, can the interim valuation no. 1 dated 24.3.2023 be christened as final and due for payment.
  3. There has never been a contractual suspension of works in terms of Clause 29 of the Contract nor has there been any termination of the contracts as per Clause 39 of the Contract by the respondent. Therefore, the respondent cannot simply consider itself discharged.
33. Parties entered into the contracts. The contract for the Katani II Apartments contained an arbitration clause, being clause 45.
34. Clause 45 of the contract provides that: -
- “ 45.
- 1 In case any dispute or differences shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress or after die (sic) completion or abandonment of the works, such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of notice. The dispute shall be referred to the Arbitration and the final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of Architectural Association of Kenya or by the Chairman or Vice Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on request of the applying parties.”
35. The applicant has raised several issues regarding commencement of the works, and if so to what extent. The parties agreed under Clause 45 to refer any disputes arising after abandonment of works for resolution through arbitration.



36. The respondent raised the payment application no. 1 on 14.3.2023 for verification by the project manager who then issued an interim valuation of the preliminary works in the sum of Kshs. 35,046,986.30/-.
37. The Kshs. 35,046,986.30/- claimed through the interim payment certificate no. 1 is inclusive of the alleged loan facility of Kshs. 24,000,000/- advanced by the respondent to the applicant for and additional sums spent by the respondent on preliminaries and mobilization, prior to the commencement of construction.
38. The respondent claimed that the applicant had clearly and unequivocally admitted the debt. However, the applicant asserted that the respondent was not entitled to payment before it paid the performance bond.
39. Clause 34.5 requires the employer to pay the contractor 14 days after the issuance of an interim payment certificate. On the other hand, clause 16 requires payment of the performance bond by the plaintiff before any payment is made. Clause 45.8 of the contract provides that the arbitrator has powers, among others to direct valuations desirable to determine the rights of the parties and to assess and award any sum which ought to have been the subject or included in any certificate.
40. From the above, I find that the applicant has raised substantive disputes arising from the construction contract that ought to be referred to arbitration. This finding is on the basis of the unique facts of this case.
41. In the upshot, the defendant/ applicant's application dated 14.3.2025 is allowed, in the following terms: -
  1. The dispute is referred to arbitration, in accordance with, clause 45 of the Contract for Construction Services Agreement dated 20<sup>th</sup> May 2022. This application serves as and constitutes the notice of the dispute to be referred to arbitration as per the said arbitration clause.
  2. According to the arbitration clause, parties 'to concur in the appointment of an Arbitrator' within thirty days of this ruling. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of Architectural Association of Kenya or by the Chairman or Vice Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on request of the applying party-the applicant in this application. To avoid delay, the request with a copy to the respondent shall be made by the applicant herein within 7 days of failure to concur on appointment of arbitrator or upon expiry of the 30 days permitted for concurrence.
  3. The appointment of arbitrator shall be made by the appointing authority to whom the request is made in accordance with the arbitration clause who shall determine the dispute. If no timelines are provided in the arbitration agreement, the appointment of the arbitrator shall be done within 21 days of the request.
  4. If the applicant fails to adhere to the arbitration clause and this order, the respondent shall proceed in accordance with section 14 of the Arbitration Act and have the arbitrator appointed accordingly.
  5. The proceedings are stayed pending the hearing and determination of the arbitration. This matter remains undetermined. Section 6 of the Arbitration Act.



6. The decision of the arbitral tribunal shall be filed in these proceedings to avoid a situation where these proceedings remain pending indefinitely or parties apply under separate miscellaneous applications for setting aside the award and or recognition and enforcement of the arbitral award.

**DATED, SIGNED AND DELIVERED AT NAIROBI THROUGH MICROSOFT TEAMS ONLINE  
APPLICATION THIS 5<sup>TH</sup> DAY OF FEBRUARY, 2026**

.....

**F. GIKONYO M**

**JUDGE**

In the presence of: -

Wamunga for defendant

Kamara for Plaintiff

CA - Kinyua

