

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA NAIROBI
CIVIL APPELLATE DIVISION
HCCA E1311 OF 2023

IATA INTERNATIONAL WEST ASIA DMCC.....
APPELLANT

VERSUS

RHODIUM STEEL LIMITED
RESPONDENT

JUDGMENT

1. This is an appeal against the decision of the lower court which failed to refer a matter to arbitration despite the fact that there was “an arbitration clause in the “engagement between the two parties. The history of this matter is that the Respondent/ Claimant filed a suit for a specific performance Against the Appellant at the lower Court and judgement in default was entered and when a date for formal proof was set, the Appellant filed an application for the matter to be referred to arbitration. The lower court did not grant the prayer sought prompting this appeal. I have read the submissions and generally the proceedings together with the authority and wish to note the following with a view to determining this appeal;

2. The law that regulates arbitration is founded in section 6(1) of the arbitration Act which requires that for a matter that is subject to arbitration, a party shall apply not later than the time when that party enters appearance- and this part is relevant in this appeal and to some extent the trial magistrate was correct in finding that the Appellant did not

comply with this part as it did not invoke the arbitration clause at the time of registering its presence. The applicant was served with summons on the 30th day of 2020 and he failed to enter appearance prompting the court to enter an interlocutory judgement. The Motion at the lower Court was filed almost three years after service of summons and the fact that the lower Court proceeded to enter interlocutory judgement signifies that the Appellant was not interested in participating in the suit. The Appellant even after entering appearance on the 30th January 2023, filed this Application after two months i.e. on the 30th day of March 2025 further portraying breach of the arbitration clause which uses mandatory terms in steps to be undertaken.

- 3.** The entry of interlocutory judgement complicates further the Appellants application. The Appellant ought to have applied to set it aside rather than going direct to file reference to an arbitrator. This is import because the interlocutory judgement is still in force and shall be affected if the Court refers the matter to arbitration. If this court was to ignore the procedure of setting aside the interlocutory judgement before an application of this nature, then parties are prone to abuse court processes by waiting for an interlocutory judgement to be entered and later rushing to have the matter referred to arbitration which shall significantly occasion delay in determination of matters in Court. In fact, it would be an abuse of the Court process. The court need an explanation as to why a party did not enter appearance so us

to guard against futile proceedings which would be a waste of Court's time. By rushing to make an application of reference to an arbiter without first offering an explanation on the circumstances that led to the entry of interlocutory judgement, the Appellant would be taking the Court for granted.

4. The timelines set by the act above was not in vain. This is because the legislatures wanted to avoid parallel proceedings, one starting at the court and just before it is concluded, a party invokes reference to arbitration to oust the court proceedings so as to start a fresh process of resolving issues(arbitration). Refers to arbitration is not cast in stone. It is closely guarded by the primary role of Courts to ensure expeditious determination of matters and prevent abuse of Court process. The courts will always frown on noncompliance of the arbitration act especially where there is considerable delay or a judgement has been entered at the lower Court.
5. The conclusion of the above is that there is no need for further analysis as to whether there was a binding agreement to refer disputes to arbitration as the above has the weight to dismiss this Appeal. Consequently, the appeal is dismissed with costs.

DATED, SIGNED AND DELIVERED VIRTUALLY ON THIS 26TH DAY OF FEBRUARY 2026.

HON L P KASSAN

JUDGE

In the presence of;

No appearance for Appellant

Adongo holding brief Ochwo for Respondent

Carol - Court Assistant

ORIGINAL