



**Morjaria & 2 others v Sansora Group Limited & 5 others (Commercial Petition E005 of 2025) [2026] KEHC 2973 (KLR) (Commercial and Tax) (6 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2973 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
COMMERCIAL PETITION E005 OF 2025**

**MN MWANGI, J**

**MARCH 6, 2026**

**IN THE MATTER OF CREDIT BANK PLC**

**-AND-**

**IN THE MATTER OF THE COMPANIES ACT 2015**

**-AND-**

**AND IN THE MATTER OF SECTIONS 780 & 782 OF THE COMPANIES ACT 2015**

**BETWEEN**

**KETAN DEVRAM MORJARIA ..... 1<sup>ST</sup> PETITIONER**

**JAY RAJNIKANT KARIA ..... 2<sup>ND</sup> PETITIONER**

**HEMLATA RAJNIKANT VALLABHDAS KARIA ..... 3<sup>RD</sup> PETITIONER**

**AND**

**SANSORA GROUP LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**SANAMA INVESTMENTS LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**CHANZU ENTERPRISES LIMITED ..... 3<sup>RD</sup> RESPONDENT**

**NOMURA NOMINEES LIMITED ..... 4<sup>TH</sup> RESPONDENT**

**P.B LEMA HOLDINGS LIMITED ..... 5<sup>TH</sup> RESPONDENT**

**CREDIT BANK PLC ..... 6<sup>TH</sup> RESPONDENT**



## RULING

1. Before me is a Chamber Summons application dated 13<sup>th</sup> June 2025 filed by the 1<sup>st</sup> to 5<sup>th</sup> respondents pursuant to the provisions of Article 159(2)(c) of *the Constitution* of Kenya, (2010), Sections 1A, 1B & 3A of *Civil Procedure Act*, Section 6 of the *Arbitration Act*, No. 4 of 1995, Rules 2 & 11 of the Arbitration Rules, 1997 and any other enabling provisions of the law. The 1<sup>st</sup> to 5<sup>th</sup> respondents seek an order that the dispute between the parties herein be referred to arbitration in accordance with the dispute resolution clauses contained in the Collaboration and Cooperation Deed and the Side Letter, both dated 31<sup>st</sup> May 2022.
2. The application is premised on the grounds on the face of the Summons, and it is supported by an affidavit sworn on the same day by Mr. Leon Nyandusi Nyachae, one of the Directors of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> respondents. Mr. Nyachae averred that the 1<sup>st</sup> to 5<sup>th</sup> respondents are shareholders of Credit Bank PLC, and their relationship is governed by the Collaboration and Cooperation Deed and the Side Letter, both dated 31<sup>st</sup> May 2022, which contain binding dispute resolution clauses providing for negotiation, and failing that, arbitration under LCIA Rules, by an arbitration tribunal seated in Mauritius. He deposed that the petitioners are fully bound by, and they are aware of these Agreements and the arbitration provisions, having executed them directly and through their representative.
3. He further averred that the petitioners improperly instituted these Court proceedings in disregard of the agreed arbitration mechanism, notwithstanding that the claims raised in the petition relating to alleged regulatory breaches, poor commercial practices, breach of Shareholder Agreements, and oppressive conduct, arise directly from, and are governed by the said Agreements. Mr. Nyachae stated that the said Agreements constitute the entire understanding between the Shareholders and expressly regulate the matters complained of, including governance standards, internal controls, and the conduct of the Bank's business. He maintained that the arbitration clauses are valid, enforceable, and capable of performance, and that this Court is constitutionally and statutorily obligated to promote and enforce alternative dispute resolution, particularly arbitration.
4. In opposition to the 1<sup>st</sup> to 5<sup>th</sup> respondents' application, the petitioners filed a replying affidavit sworn on 9<sup>th</sup> July 2025 by Mr. Ketan Devram Morjaria, the 1<sup>st</sup> petitioner herein. Mr. Morjaria averred that the relationship between the parties herein is governed by the Memorandum and Articles of Association of Credit Bank PLC, and that the petition concerns repeated violations of the *Banking Act*, CBK Prudential Guidelines, and the Articles of Association by the 1<sup>st</sup> to 5<sup>th</sup> respondents, necessitating the exercise of the High Court's discretion under Sections 780, 782 & 796 of the *Companies Act*. He contended that the Collaboration and Cooperation Deed and the Side Letter both dated 31<sup>st</sup> May 2022, do not apply to the subject matter of the petition, as they relate to a separate investment transaction involving Shorecap III LLP, against whom no claim is made, and in any event, the impugned conduct pre-dates those Agreements, rendering the dispute non-arbitrable.
5. Mr. Morjaria asserted that this petition is founded on allegations of unfair prejudice arising from insider lending, non-performing loans, abuse of Directors' powers, failure to act on the EY Project Janus Report, preferential treatment of entities associated with members of the Nyachae family, failure to pursue recoveries, exclusion of petitioners from corporate governance processes including the AGM, and the complete absence of returns on the petitioners' investment. He averred that these acts constitute breaches of banking law and the shareholder compact embodied in the Articles of Association, which contain no arbitration clause. Mr. Morjaria maintained that the subject matter of



- this petition cannot be referred to arbitration and that an arbitrator would lack jurisdiction to grant the statutory reliefs sought, which are a preserve of the High Court’s jurisdiction.
6. In support of the application herein, the 6<sup>th</sup> respondent filed a replying affidavit sworn on 28<sup>th</sup> July 2025 by Mr. Wainaina Francis Ngaruiya, the 6<sup>th</sup> respondent’s Head of the Legal Department. Mr. Ngaruiya deposed that although the 6<sup>th</sup> respondent is not a party to the Collaboration and Cooperation Deed both dated 31<sup>st</sup> May 2022, the Deed expressly governs the relationship between the petitioners and the 1<sup>st</sup> to 5<sup>th</sup> respondents as Shareholders in relation to their dealings with the Bank. He averred that the Deed is the primary and relevant instrument governing Shareholder affairs and disputes, as the reliefs sought in the petition alleging unfairly prejudicial conduct, breaches of internal policies, banking laws, and Shareholder Agreements, and seeking inquiries, accounts, and compulsory purchase of shares, are directed solely against fellow Shareholders and not against the 6<sup>th</sup> respondent.
  7. Mr. Ngaruiya further averred that these issues are squarely governed by the Deed, which contains a valid and unchallenged arbitration agreement under Clause 36 requiring disputes to be referred to arbitration. He stated that the petitioners voluntarily entered into the Deed, which expressly prevails over the Articles of Association in the event of conflict, thereby rendering the argument that only the Articles apply, misconceived. He maintained that the arbitration clause is binding and enforceable notwithstanding its absence from the Articles, and that the arbitrator’s jurisdiction is contractually conferred and not limited, including the power to grant reliefs under the [Companies Act](#), 2015.
  8. The application herein was canvassed by way of written submissions, highlighted on 28<sup>th</sup> October 2025. The 1<sup>st</sup> to 5<sup>th</sup> respondents’ submissions were filed by the law firm of Mohammed Muigai LLP on 16<sup>th</sup> September 2025, the 6<sup>th</sup> respondent’s submissions were filed on 15<sup>th</sup> August 2025 by the law firm of Mboya Wang’ongu & Company Advocates, and the petitioners’ submissions were filed by the law firm of NBMA Advocates LLP on 16<sup>th</sup> September 2025.
  9. Mr. Mogere, learned Counsel for the 1<sup>st</sup> to 5<sup>th</sup> respondents referred to the case of South Eastern Kenya University v Geokarma Construction Ltd [2022] KEHC 2457 (KLR), and submitted that under Article 159(2)(c) of [the Constitution](#) of Kenya, Courts are constitutionally mandated to promote alternative dispute resolution, a principle reflected in Section 6 of the [Arbitration Act](#), which empowers this Court to stay proceedings and refer disputes to arbitration. He relied on the Court of Appeal case of Niazsons (K) Ltd v China Road & Bridge Corporation Kenya [2001] KECA 376 (KLR), and stated that the instant application was filed promptly before the 1<sup>st</sup> to 5<sup>th</sup> respondents took any procedural steps that could bar the application herein.
  10. Counsel contended that there are no legal impediments to the validity, operation, or performance of the arbitration agreement. He stated that the disputes raised, including allegations of insider lending, regulatory breaches, and oppressive conduct, are ongoing governance issues connected to the parties’ contractual relationship under the Deed and Side Letter. He argued that the presumption of arbitral jurisdiction supported by the principles in Premium Nafta Products Limited (20<sup>th</sup> defendant) and others (Respondents) v Fili Shipping Company Limited (14<sup>th</sup> Claimant) and others (appellants) [2007] UKHL 4, establishes that arbitration clauses cover all disputes arising out of, or in connection with the Agreement, regardless of when the underlying conduct occurred. Mr. Mogere referred to the case of China Construction Engineering (K) Ltd v Vernonia Apartments Ltd & another [2020] KEHC 4923 (KLR), and asserted that the impugned arbitration clauses are valid, enforceable, and unchallenged.
  11. Counsel submitted that claims under Sections 780 & 782 of the [Companies Act](#), 2015, which seek relief for unfair prejudice, are arbitrable. He further submitted that jurisdictional objections do not preclude arbitration, as arbitrability concerns the nature of the dispute, not the remedies available. He



- argued that permissive statutory language “may” in the *Companies Act* reflects Parliament’s intention that Court intervention is optional, not exclusive, while protecting minority Shareholders’ interests.
12. Mr. Mogere referred to the case of *Lettau v Paradiso Toys Limited & another* [2024] KEHC 3793 (KLR), and urged this Court to give full effect to contractual arbitration agreements while safeguarding statutory objectives. He stated that the doctrine of kompetenz-kompetenz under Section 17 of the *Arbitration Act*, empowers the arbitral tribunal to rule on its own jurisdiction, resolving the petitioners’ jurisdictional objections.
  13. He submitted that the contractual framework, including Clauses 28 and 21.2 of the Deed, establishes the supremacy of the Deed and Side Letter over prior Agreements and the Articles of Association, while Clause 36 of the Deed and Clause 30 of the Side Letter provide broad jurisdiction for disputes arising out of, or in connection with the Agreements, including interpretation, validity, enforceability and termination.
  14. He stated that the 6<sup>th</sup> respondent, as a signatory to the Side Letter, is bound by the arbitration process. Counsel asserted that all material allegations in this petition including insider loans, governance failures, and related-party transactions, directly implicate contractual obligations under the Deed and Side Letter, and that objections raised by the petitioners regarding the relevance of Shorecap, pre-May 2022 conduct, and statutory remedies are addressed by the express supremacy clause, and the commercial rationale for arbitration.
  15. Ms Makena, learned Counsel for the 6<sup>th</sup> respondent submitted that the dispute between the petitioners and the 1<sup>st</sup> to 5<sup>th</sup> respondents should be referred to arbitration under Clause 36 of the Deed, in line with Section 6 of the *Arbitration Act*. She cited the cases of *CM & A Logistics Limited v Upland Premium Diaries & Foods Limited* [2022] KEHC 14428 (KLR), and further submitted that Courts may only refuse to refer a matter if the arbitration agreement is null or there is no dispute. She relied on the Court of Appeal case of *Eunice Soko Mlagui v Suresh Parmar & others* [2017] KECA 736 (KLR), and stated that the instant application was filed promptly on 13<sup>th</sup> June 2025, simultaneously with the Notice of Appointment of Advocates, before any denial of liability or defence was filed, satisfying the first condition under Section 6 of the *Arbitration Act*.
  16. Ms Makena posited that the arbitration agreement in Clause 36 of the Deed is valid, operative, and capable of being performed as it provides detailed procedures for dispute resolution, including negotiation, appointment of arbitrators, applicable rules, the venue for arbitration and for continuation of the arbitral jurisdiction, even if the Deed is terminated or cancelled. She referred to the case of *Vihar Construction Company Limited v Uhani Limited* [2015] KEHC 6727 (KLR) and *Karunda v Keekorok Capital Ltd* [2023] KEELRC 783 (KLR), and asserted that since there is no allegation of fraud, duress, undue influence, or inadequacy of the agreement, the arbitration agreement between the parties herein must be upheld.
  17. Counsel maintained that there exists a live dispute between the petitioners and the 1<sup>st</sup> to 5<sup>th</sup> respondents concerning alleged unfairly prejudicial conduct in the affairs of the 6<sup>th</sup> respondent, including shareholder management, financial accounts, and shareholding rights. She asserted that these issues are expressly contemplated by the arbitration agreement, as the Deed governs the parties’ engagement and dealings with the 6<sup>th</sup> respondent. Ms Makena also relied on the case of *Lettau v Paradiso Toys Limited & another* (supra) and submitted that reliefs sought under Sections 780 & 782 of the *Companies Act*, 2015, including declarations, audits, and orders for share purchase, fall within the arbitral jurisdiction.



18. Mr. Amoko, learned Counsel for the petitioners submitted that the dispute in these proceedings is not subject to the arbitration clauses in the Collaboration & Co-operation Deed and Side Letter, both dated 31<sup>st</sup> May 2022. He contended that the 2022 instruments govern only the relationship between Shorecap III, which came in as a 20% investor and the principal shareholders collectively, and do not create rights or obligations between the petitioners and the controlling shareholders inter se. He relied on the Court of Appeal case of National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Ltd & another [2001] KECA 362 (KLR), and submitted that the arbitration clauses, which provide for LCIA arbitration in Mauritius under English law, cannot be interpreted to cover disputes arising from breaches of the Bank's Memorandum and Articles of Association or statutory obligations, including those pre-dating 2022.
19. Mr. Amoko stated that the matters before this Court concern statutory claims of unfair prejudice under Sections 780 & 782 of the *Companies Act*, 2015, including insider lending, unbooked guarantees, regulatory breaches, exclusion from Annual General Meetings, and denial of dividends, as detailed in the EY Project Janus and PWC reports. These grievances he contended, relate to conduct by the Controlling Shareholders which contravenes the Bank's internal policies, the *Banking Act*, and CBK Prudential Guidelines, and cannot be subordinated to a private arbitration agreement. Counsel relied on the Supreme Court case of Macharia & another v Kenya Commercial Bank Ltd & 2 others [2012] KESC 8 (KLR), and argued that reliefs under Sections 780 & 782 of the *Companies Act* are statutory and public in nature, reserved exclusively for the High Court, and cannot be conferred by an arbitral tribunal.

#### **Analysis And Determination.**

20. I have considered the application filed herein, the grounds on the face of it and the affidavit filed in support thereof. I have also considered the replying affidavits by the petitioners and the 6<sup>th</sup> respondent as well as the written submissions by Counsel for the parties. The issue that arises for determination is whether the dispute herein should be referred to Arbitration.
21. Section 6 of the *Arbitration Act*, No. 4 of 1995 states 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.



22. The Court's obligation upon being moved under the above provisions, has been the subject of numerous Court decisions. The Court of Appeal in the often cited case of *Niazsons (K) Ltd v China Road Bridge* (supra), held that-

All that an applicant for a stay of proceedings under section 6 (1) of the *Arbitration Act* of 1995 is obliged to do is to bring his application promptly. The court will then be obligated to consider the threshold things:

- a. Whether the applicant has taken any step in the proceedings other than the steps allowed by the section;
- b. Whether there are any legal impediments on the validity, operation or performance of the arbitration agreement; and
- c. Whether the suit intended concerned a matter agreed to be referred to arbitration

23. In this case, it is not in contest that the instant application was filed promptly on 13<sup>th</sup> June 2025, contemporaneously with a Notice of Appointment of Advocates, and before the 1<sup>st</sup> to 5<sup>th</sup> respondents took any substantive step in the proceedings. I am therefore satisfied that the first statutory requirement under Section 6 of the *Arbitration Act* is satisfied.

24. The Collaboration and Cooperation Deed and the Side Letter both dated 31<sup>st</sup> May 2022, contain detailed and comprehensive arbitration clauses under Clause 36 and Clause 30, respectively. Clause 36 of the Collaboration and Cooperation Deed provides as follows-

36. Dispute Resolution

36.1. In the case of any dispute arising out of or in connection with this Deed (including as to the interpretation, validity, enforceability, or termination of this Deed) between the parties (any such dispute hereinafter referred to as a Dispute) then prior to the commencement of arbitration in accordance with the provisions below in this Section 36, each of the parties shall use commercially reasonable endeavours to resolve the Dispute by negotiation according to the following procedure.

36.2 The party desiring to raise a Dispute shall give the other party written notice of the Dispute stating in reasonable detail the nature of the Dispute. Within fifteen (15) days after the date on which the notice was served, the other Party shall submit a written response. Within thirty (30) days after the date on which the written response is submitted, representatives from each party with authority to settle the Dispute shall meet at a mutually acceptable time and place in an attempt to resolve the Dispute.

36.3 If:

36.3.1 the Dispute is not settled in writing within ten (10) days after the latest date as provided above for the meeting of party representatives (or within such longer period of time as the parties may agree); or

36.3.2 any party fails or refuses to meet as required above, then the other party may refer the Dispute to arbitration in accordance with the following provisions.

36.4 The Dispute shall be referred to and finally resolved by arbitration under the arbitration rules and procedures of the London Court of International Arbitration (LCA), which rules are



deemed to be incorporated by reference into this Clause 36.4 and each party hereto consents to such arbitration as the sole and exclusive method of resolving any such Dispute.

25. Clause 30 of the Side Letter on the other hand provides that–
30. Dispute Resolution
- 30.1 In the case of any dispute arising out of or in connection with this Deed (including as to the interpretation, validity, enforceability, or termination of this Deed) between the Parties (any such dispute hereinafter referred to as a Dispute) then prior to the commencement of arbitration in accordance with the provisions below in this Clause 30, each of the Parties shall use commercially reasonable endeavours to resolve the Dispute by negotiation according to the following procedure.
- 30.2 The Party desiring to raise a Dispute shall give the other Party written notice of the Dispute stating in reasonable detail the nature of the Dispute. Within fifteen (15) days after the date on which the notice was served, the other Party shall submit a written response. Within thirty (30) days after the date on which the written response is submitted, representatives from each party with authority to settle the Dispute shall meet at a mutually acceptable time and place in an attempt to resolve the Dispute.
- 30.3 If:
- 30.3.1 the Dispute is not settled in writing within ten (10) days after the latest date as provided above for the meeting of party representatives (or within such longer period of time as the Parties may agree); or
- 30.3.2 any party fails or refuses to meet as required above, then the other party may refer the Dispute to arbitration in accordance with the following provisions.
- 30.4 The Dispute shall be referred to and finally resolved by arbitration under the arbitration rules and procedures of the London Court of International Arbitration (LCIA), which rules are deemed to be incorporated by reference into this Clause 30.4 and each party hereto consents to such arbitration as the sole and exclusive method of resolving any such Dispute.
26. This Court is of the considered view that the import of the foregoing provisions is that any dispute arising out of, or in connection with the Collaboration and Cooperation Deed and the Side Letter, both dated 31<sup>st</sup> May 2022, including their interpretation, validity, enforceability, or termination, shall be referred to arbitration under the LCIA Rules, with the seat of arbitration being Mauritius. On perusal of the Collaboration and Cooperation Deed, it is evident that it was entered into between Shorecap III, LP and the principal Shareholders, who include the petitioners and the 1<sup>st</sup> to 5<sup>th</sup> respondents as set out in Schedule 1, and that the petitioners executed the said Deed in their personal capacities. Further, a perusal of the Side Letter shows that it was executed between the parties to this petition and Shorecap III, LP, and was also signed by the petitioners in their personal capacities.
27. In addition to the foregoing, the record shows that there is no allegation before this Court of fraud, duress, undue influence, illegality, or any other vitiating factor that would render the aforesaid arbitration agreement invalid, inoperative, or incapable of performance. I am therefore satisfied that there exists a valid and binding arbitration agreement between the parties.
28. The issue that remains for determination is whether the dispute between the parties herein falls within the scope of the arbitration clauses. On perusal of the petition dated 18<sup>th</sup> February 2025, I am persuaded that the gravamen of the petitioner’s case is that the affairs of the 6<sup>th</sup> respondent have been conducted



by the 1<sup>st</sup> to 5<sup>th</sup> respondents as majority shareholders and being the persons in control, in a manner that is oppressive and unfairly prejudicial to the petitioners as minority shareholders, contrary to the Companies Act, 2015, the Banking Act, the Prudential Guidelines issued by the Central Bank of Kenya, and the Bank's internal policies.

29. The petitioners contend that the 6<sup>th</sup> respondent has been systematically exploited through insider and related-party lending, regulatory and policy breaches, reckless credit practices, and failure to act on adverse audit findings by Ernst & Young and PricewaterhouseCoopers, all of which has benefited Directors and entities associated with the Nyachae family, while exposing the 6<sup>th</sup> respondent to risk. It is claimed that as a result, the 6<sup>th</sup> respondent has persistently underperformed and the petitioners have received no meaningful returns on their investment. The petitioners therefore assert that the 1<sup>st</sup> to 5<sup>th</sup> respondents' conduct amounts to an abuse of power and a breach of the Shareholder compact, thereby warranting relief for unfair prejudice under Sections 780 & 782 of the Companies Act, 2015.
30. This Court is of the considered view that these matters are directly connected to, and arise in the context of the parties' relationship as Shareholders and their engagement with the 6<sup>th</sup> respondent, a relationship which the Collaboration and Cooperation Deed dated 31<sup>st</sup> May 2022, expressly sought to regulate. On perusal of the said Deed, I am persuaded that its terms deal with the standards of governance, internal controls, Shareholder conduct and dealings with the 6<sup>th</sup> respondent, and expressly provides under Clause 21.2 that it prevails over the Articles of Association in the event of any inconsistency. Clause 21.2 states that –

If any provision in the Articles conflicts with any provision of this Deed, this Deed shall prevail as between the parties. The parties shall take all such actions and exercise all voting and other rights and powers available to them to procure the amendment of the Articles to the extent necessary to permit the Company and its affairs to be administered as provided in this Deed.

31. In addition to the foregoing, this Court agrees with Counsel for the 1<sup>st</sup> to 5<sup>th</sup> respondents that the arbitration clauses in the Collaboration and Cooperation Deed and the Side Letter are drafted in broad terms, covering disputes arising out of, or in connection with the Deed and the Side Letter. Such wording has consistently been interpreted to encompass a wide range of disputes connected to the contractual relationship between the parties, including disputes touching on alleged misconduct, breaches of obligations, and the manner in which contractual and shareholder rights are exercised.
32. The fact that some of the impugned conduct may have commenced prior to the execution of the 2022 instruments does not, in itself, remove the dispute from the scope of the arbitration clauses, particularly, where the alleged conduct is ongoing and directly relates to the parties' continuing relationship governed by the Deed.
33. In regard to the arbitrability of claims founded on Sections 780 & 782 of the Companies Act, 2015, this Court is persuaded that the Act does not expressly bar the reference of unfair prejudice disputes to arbitration. The use of the word "may" in Section 780 of the Companies Act, 2015, denotes discretion rather than a mandatory invocation of the Court's jurisdiction. Further, there is nothing in the Companies Act to suggest that the jurisdiction of the High Court in such matters is exclusive or incapable of being exercised by an arbitral tribunal, where the parties have agreed to arbitrate. Accordingly, this Court is satisfied that the reliefs being sought in the petition, including declaratory reliefs, inquiries, accounts, and orders for the purchase of shares, are capable of being determined within an arbitral process.



34. In any event, any concern as to the scope of the arbitrator's jurisdiction, can be appropriately determined by the tribunal itself pursuant to the doctrine of kompetenz-kompetenz as provided for under Section 17 of the Arbitration Act. To this end, I agree with the Court's finding in the case of *Euromec International Limited v Shandong Taikai Power Engineering Company Limited* [2021] KEHC 93 (KLR), where it was held as follows-

In any event, the question whether there exists a dispute or not touches on the jurisdiction of the arbitrator. The arbitrator's jurisdiction can be challenged by attacking the agreement's validity or on the tribunal's jurisdiction over the subject matters, among other challenges. Section 17 of the Arbitration Act provides for the doctrine of kompetenz-kompetenz, a jurisprudential doctrine whereby a legal body, such as a court arbitral tribunal, may have competence, or jurisdiction to rule as to the extent of its own competence on an issue before it. The doctrine of kompetenz-kompetenz is enshrined in the UNCITRAL Model Law on International Commercial Arbitration and Arbitration Rules. Article 16(1) of the Model Law and article 23(1) of the Arbitration Rules both dictate that

"the arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement."

35. This Court is also mindful of the constitutional imperative under Article 159(2)(c) of the Constitution of Kenya, 2010, which obligates Courts to promote alternative forms of dispute resolution, including arbitration. Courts must, where possible, give effect to the parties' freely negotiated dispute resolution mechanisms and refrain from interfering with arbitration clauses in agreements, unless clear statutory or legal grounds are established.

36. In the circumstances, I am satisfied that the dispute between the parties herein falls within the ambit of the arbitration clauses contained in the Collaboration and Cooperation Deed and the Side Letter both dated 31<sup>st</sup> May 2022. I am also satisfied that the arbitration agreement is valid, operative, and capable of being performed, and that all the statutory pre-conditions under Section 6 of the Arbitration Act have been met.

37. It is therefore my finding that the 1<sup>st</sup> to 5<sup>th</sup> respondents' Chamber Summons application dated 13<sup>th</sup> June 2025 is merited. It is hereby allowed in the following terms –

- i. I grant an Order for stay of the proceedings in this petition and I hereby refer the dispute between the parties herein to arbitration in accordance with Clause 36 of the Collaboration and Cooperation Deed and Clause 30 of the Side Letter, both dated 31<sup>st</sup> May 2022; and
- ii. Costs are awarded to the 1<sup>st</sup> to 5<sup>th</sup> respondents/applicants.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 6<sup>TH</sup> DAY OF MARCH 2026.  
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

**NJOKI MWANGI**

**JUDGE**

In the presence of:-

Ms Aremo h/b for Mr. Imende for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents/applicants-

Ms Kendi h/b for Mr. Peter Waiyaki for the 6<sup>th</sup> respondent



Mr. Nyaga h/b for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> petitioners/respondents

Ms B. Wokabi - Court Assistant.

NJOKI MWANGI, J.

