



**Gakibe v M Dalmar Trading Company Limited (Arbitration Suit E034 of 2024) [2026] KEELC 1398 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEELC 1398 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ARBITRATION SUIT E034 OF 2024  
J OMANGE, J  
FEBRUARY 26, 2026  
IN THE MATTER OF AN ARBITRATION**

**BETWEEN**

**MARY WAMBUI GAKIBE ..... APPLICANT**

**AND**

**M DALMAR TRADING COMPANY LIMITED ..... RESPONDENT**

**RULING**

1. The Applicant has moved this Court by way of an Originating Summons dated 29th April 2024 pursuant to Section 17 of the *Arbitration Act* seeking, inter alia, an order staying arbitral proceedings and setting aside an interim ruling/award of the arbitral tribunal delivered upon a preliminary objection on jurisdiction.
2. The arbitral tribunal, upon hearing the preliminary objection raised by the Applicant, held that it had jurisdiction to hear and determine the dispute arising from a lease agreement between the parties.
3. The Applicant being dissatisfied with that determination now seeks the intervention of this Court. The Applicant challenges the arbitral tribunal's jurisdiction on the following grounds: That the arbitration emanated solely from a court referral made by the Chief Magistrate's Court on 31st May 2023, which orders were later discharged on 6th November 2023, thereby extinguishing the arbitral mandate; That the arbitrator was irregularly appointed by the Chairman of the Chartered Institute of Arbitrators (Kenya Branch) contrary to Order 46 of the Civil Procedure Rules; That a court-referred arbitration requires continuous court supervision including timelines and special cases; That the dispute had previously been litigated before the Business Premises Rent Tribunal, the Magistrates' Court, the Environment and Land Court and the Court of Appeal.
4. On the other hand the Respondents case is as follows; The lease agreement contains a valid and binding arbitration clause; The arbitrator was appointed strictly in accordance with that clause and



section 12 of the [Arbitration Act](#); Order 46 of the Civil Procedure Rules does not apply to contractual arbitration; Previous proceedings were dismissed for want of jurisdiction and never determined the merits of the dispute; The arbitral tribunal properly exercised jurisdiction in dismissing the preliminary objection.

5. The Court distills the following issues for determination:
  - i. Whether the arbitral tribunal had jurisdiction;
  - ii. Whether the appointment of the arbitrator was lawful;
  - iii. Whether the court referral and subsequent discharge affected the arbitral mandate;
  - iv. Whether the tribunal properly dismissed the preliminary objection;
  - v. Whether previous litigation ousted arbitration.
6. Section 17 of the [Arbitration Act](#) embodies the doctrine of kompetenz-kompetenz and expressly empowers an arbitral tribunal to rule on its own jurisdiction.

The Court of Appeal in *Anne Mumbi Hinga v Victoria Njoki Gathara* [2009] eKLR affirmed that an arbitral tribunal must be allowed the first opportunity to determine jurisdiction and that courts should exercise restraint. Likewise, in *Safaricom Limited v Ocean View Beach Hotel Limited & 2 Others* [2010] eKLR, the Court underscored the centrality of party autonomy and minimal judicial interference. The Applicant properly raised a preliminary objection before the arbitral tribunal. The tribunal acted within statutory authority in entertaining and determining it.

7. On the second issue of whether the arbitration was court referred, the lease agreement between the parties herein contained an arbitration clause within the meaning of section 4 of the [Arbitration Act](#). The referral by court and the subsequent discharge on 6th November 2023 did not extinguish the arbitration agreement.
8. The appointment of the Arbitrator was faulted on the basis that the court should have been involved. The lease agreement clause 17 reads; “Any dispute, differences or question which may arise at any time between the parties touching upon the construction of this agreement or on the rights and liabilities of the parties thereon shall be referred to the decision of a single arbitrator to be agreed upon by the parties or in default of agreement within 14 days to be appointed at any request of any party by the Chairman for the time being of the Kenya Branch of Chartered Institute of Arbitrators or the Vice Chairman if the Chairman is unable or disqualified for any reason”. The arbitration clause provided that in default of agreement, appointment would be by the Chairman of the Chartered Institute of Arbitrators Kenya Branch. The procedure was followed.

This is in line with Section 12 of the [Arbitration Act](#) which gives primacy to the appointment procedure agreed upon by the parties. Order 46 of the Civil Procedure Rules applies only where parties had no arbitration clause but have been mandated by the court to pursue arbitration. I therefore find that the appointment of the Arbitrator was lawful as it complied with the terms of the lease.

9. It was argued that the court should have been involved throughout the process. Save for specific instances provided under the Act, arbitral proceedings are autonomous. The [Arbitration Act](#) deliberately limits judicial intervention. The Supreme Court in *Nyutu Agroviet Limited v Airtel Networks Kenya Limited* [2019] eKLR reaffirmed the principle of minimal court interference. The tribunal was therefore entitled to independently manage its proceedings.
10. I have considered the issue of the previous litigation. I note that the previous matters which the Respondent argues were filed so as to seek urgent reliefs before various forums were dismissed for want



of jurisdiction. None of the proceedings addressed the substantive dispute under the lease agreement. These Rulings reinforced the agreed dispute resolution mechanism as agreed by the parties.

11. It is therefore my finding that the Preliminary Objection on Jurisdiction was properly dismissed by the arbitral tribunal. The Court is satisfied that the arbitral tribunal properly assumed and exercised jurisdiction in accordance with the law. This Court finds no basis under section 17 of the [Arbitration Act](#) to interfere with the determination. On the issue of costs, in the interests of promoting Alternative Dispute Resolution, costs of this matter shall abide the determination by the Arbitrator.
12. In the end the court issues the following orders;
  - a. The Originating Summons dated 29th April 2024 is hereby dismissed.
  - b. The interim ruling/award of the arbitral tribunal affirming jurisdiction is upheld.
  - c. The arbitral proceedings shall proceed to hearing and determination on the merits.
  - d. Costs shall abide the outcome of the Arbitral Tribunals determination

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26<sup>TH</sup> DAY OF FEBRUARY 2026.**

**JUDY OMANGE**

**JUDGE.**

In the Presence of:

Mr. Munge for Applicant.

N/A for Respondent.

Peter – Court Assistant.

