



**Mokua v Samburu Project (Cause E051 of 2025)  
[2026] KEELRC 609 (KLR) (27 February 2026) (Ruling)**

Neutral citation: [2026] KEELRC 609 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAKURU  
CAUSE E051 OF 2025  
J RIKA, J  
FEBRUARY 27, 2026**

**BETWEEN**

**NAOM KEMUNTO MOKUA ..... CLAIMANT**

**AND**

**THE SAMBURU PROJECT ..... RESPONDENT**

**RULING**

1. The Respondent filed an application dated 17th November 2025, seeking an order that the proceedings herein are stayed, and the dispute is referred to arbitration, pursuant to clause 26 of the Claimant's contract of employment, dated 10th June 2025.
2. Clause 26 states that any dispute or controversy, arising out of, or relating to the formation, performance or termination of the contract, will be considered by the Parties promptly, at their own level.
3. If they fail to reach an amicable settlement, they will submit the dispute to the arbitration of a single Arbitrator at Nairobi, Kenya.
4. It was agreed by the Parties that the application is considered and determined, on the strength of the Parties' affidavits and submissions.
5. They confirmed filing and exchange of submissions, at the last mention before the Court, on 30th January 2026.
6. The Respondent submits that there is a valid arbitration agreement between the Parties. The Court is mandated to stay its proceedings and refer dispute to alternative disputes resolution mechanisms, under section 15 of the E&LRC Act, which has constitutional anchorage in Article 159 [2] [c] of [the Constitution](#) of Kenya.



7. The Respondent cites a High Court decision, *Geoffrey Muthinja & Another v. Samuel Muguna Henry & 1756 Others* [2015]e-KLR, where it was held that where an alternative dispute resolution mechanism exists, the Court ought not to be the first port of call.
8. The Respondent also relies on *Redfern & Hunter on International Arbitration*, a legal textbook which underscores that party autonomy, is the cornerstone of arbitration. The Parties, through their consent, have established the authority of the arbitrator over that of the Court.
9. The Claimant submits that the presence of an arbitration clause, does not automatically bar the Claimant from filing her Claim in Court. She waived the arbitration clause, and submitted her dispute to the jurisdiction of the Court.
10. Relying on the Court of Appeal decision, *Pumwani Riyadhha Mosque Committee & Another v. Gikomba Business Centre Limited* [2025] KECA 1257 [KLR], the Claimant submits that a Party, desirous of activating an arbitration clause, where a suit has been filed in Court, is duty bound to comply with Section 6[1] of the *Arbitration Act*. Section 6[1] of the *Arbitration Act* states: -

“ 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 the Party enters appearance, or files any pleadings, or takes any other step in the proceedings, stay proceedings and refer the Parties to arbitration.”

**The Court Finds:-**

11. Parties do not dispute the existence of the arbitration agreement, under clause 26 of the contract of employment.
12. The clause requires them to attempt to resolve any dispute relating to the contract first at their own level, failing which they will submit the dispute to the arbitration of a single Arbitrator, sitting at Nairobi.
13. At paragraph 28 of the Respondent’s Statement of Response and Counterclaim, dated 13th October 2025, the Respondent admits that the Court has jurisdiction. It has not only filed a Statement of Response, but has also submitted a Counterclaim to the Court, for determination, and unequivocally admitted that the Court has jurisdiction.
14. The application seeking stay of proceedings, and referral to arbitration, is dated 17th November 2025. This is way after, the Respondent filed Memorandum of Appearance dated 18th September 2025, and the Statement of Response and Counterclaim, dated 13th October 2025.
15. The application by the Respondent offends Section 6 [1] of the *Arbitration Act*.
16. To compound irregularities in the application, the Respondent is alleged, in a pending application filed by the Claimant, dated 11th February 2026, to have filed another Claim at a Court in Los Angeles, USA, seeking recovery of the same amount counterclaimed by the Respondent from the Claimant, of USD 13,125.
17. The Claimant seeks an antisuit injunction, in her pending application.
18. How would referral to arbitration in Kenya, as sought by the Respondent, assist the Parties while the Respondent has initiated proceedings against the Claimant in the USA, contrary to the same arbitration clause?



19. The Counterclaim arises out of the same contract of employment. It cannot be litigated in Court alone, in Kenya or the USA, while the Claim is submitted to an Arbitrator.
20. Clause 28 of the contract of employment subject matter of the dispute, also appears to confer jurisdiction on the Court, notwithstanding the existence of clause 26. It states..."The Courts of Kenya shall have exclusive jurisdiction to adjudicate any dispute arising under, or in connection with this contract."
21. While the arbitration clause 26, states that any dispute will be submitted to a single Arbitrator, clause 28 states that Courts in Kenya shall, have exclusive jurisdiction to adjudicate any dispute between the Parties, relating to the contract of employment. Submission to the Courts in Kenya, is couched in obligatory terms. It is an exclusive jurisdiction. 'Shall' denotes mandatory, non-negotiable obligation. Adjudication by the Court, is exclusive and obligatory. 'Will' on the other hand denotes future intention, that there is expectation something will be done. Arbitration is discretionary. The arbitration clause language, is permissive.
22. The arbitration clause does not establish the jurisdiction of the Arbitrator over that of the Court. An arbitration clause is an expression of intent of the Parties, to withdraw their dispute from a national court system, and to submit the dispute to arbitration. The Parties have not renounced their constitutional right to have their dispute decided by the Court. They have indeed embraced that right, under clause 28 of the contract of employment.
23. The contract of employment has not therefore, positively rejected the jurisdiction of the Court.
24. The application filed by the Respondent dated 17th November 2025, has no merit.  
It is ordered:-
  - a. The application is declined.
  - b. Costs in the cause.

**DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NAKURU, UNDER RULE 68 [5] OF THE E&LRC [PROCEDURE] RULES. 2024, THIS 27TH DAY OF FEBRUARY 2026.**

**JAMES RIKA**  
**JUDGE**

