



REPUBLIC OF KENYA



**Wahome & 2 others v Githiri (Civil Case E003 of 2024)
[2026] KEHC 4978 (KLR) (17 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4978 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CIVIL CASE E003 OF 2024**

M THANDE, J

APRIL 17, 2026

BETWEEN

GEOFFREY MAINA WAHOME 1ST PLAINTIFF

SAMUEL MWANGI NDONGA 2ND PLAINTIFF

RENMAN AFRICA LIMITED 3RD PLAINTIFF

AND

EMMANUEL MUNIU GITHIRI DEFENDANT

RULING

1. The Plaintiffs filed a plaint dated 7.2.24 seeking the following:
 - a. A mandatory injunction directed at the Defendant to provide all the books of account belonging to the 3rd Plaintiff for inspection as to their accuracy;
 - b. A permanent injunction directed at the Defendant to, immediately cease operating in the role of director of the 3rd Plaintiff.
 - c. An order directed at the Defendant to furnish proper accounts of the 1st and 2nd Plaintiffs' investment in the 3rd Plaintiff.
 - d. Judgment in favour of the 1st Plaintiff for the immediate refund of the sum of Kes. 2,400,000/ = with interest from the date of disbursement to the date of full and final payment.
 - e. Judgment in favour of the 2nd Plaintiff for the immediate refund of the sum Kes. 3,086,951.73/ = with interest from the date of disbursement to the date of full and final payment.
 - f. An award of general damages in favour of the 1st and 2nd Plaintiffs against the Defendant.
 - g. Interest on the monetary sums at Court rates.



- h. Costs of the suit.
2. By an Application dated 29.5.24, the Defendant seeks that the suit herein be stayed and the matter be referred to alternative dispute resolution or arbitration. He also seeks costs of the Application and the suit.
 3. The Defendant stated that the suit emanates from a share subscription agreement (the agreement) dated 9.11.2020 between the parties. His case is that clause 24 of the agreement provides that all disputes are to be resolved amicably, failing which they would be referred to arbitration. The Defendant contends that the Plaintiffs have not attempted to resolve the dispute amicably or refer the same to arbitration. He thus seeks that the suit be stayed to allow the dispute herein to be dealt with in accordance with the agreement and Section 6 of the *Arbitration Act*.
 4. The Plaintiffs opposed the Application by way of grounds of opposition dated 31.5.24 and a replying affidavit sworn by the 1st and 2nd Plaintiffs on 3.6.24. The grounds are that the Application is defective as it was not filed at the time the Defendant entered appearance as required under Section 6(1) of the *Arbitration Act*; that granting the Application would undermine the principles of fairness and should not prejudice the Plaintiffs' right to a timely resolution of the dispute; that the Plaintiffs have complied with all procedural and substantive requirements including making several attempts at an amicable resolution; that the Application is a tactic to delay the proceedings rather than a genuine effort to resolve the dispute through arbitration.
 5. The exhibited agreement provides for dispute resolution as follows:
 - 24.1 Each party shall use its best efforts to settle amicably any dispute arising out of or connection with this agreement or in its validity, interpretation or termination.
 - 24.2 Save as herein otherwise specifically provided, any dispute between the parties as to matters arising under or pursuant to this Agreement as aforesaid which cannot be settled amicably within fifteen (15) days after receipt by one party of the other party's request for such amicable settlement may be submitted by either party to arbitration in accordance with the provisions of clauses 24.3 to 24.7 (both inclusive).
 - 24.3. ...
 6. It can be seen from the above that the agreement does have an arbitration clause.
 7. Section 6(1) of the *Arbitration Act* provides:

“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.”
 8. The law is that stay of proceedings in a court may only be granted and the matter referred to arbitration, if an application for such stay and referral is made at the time a party enters appearance or acknowledges



the claim against which the stay of proceedings is sought. Any application for stay of proceedings and referral of a matter to arbitration made outside the time prescribed by statute, will be rejected.

9. The record shows that the Defendant entered appearance on 10.5.24. It was not until 29.5.24 that the Defendant filed the present Application.

10. In *Diocese of Marsabit Registered Trustees v Technotrade Pavilion Ltd* [2014] KEHC 4810 (KLR), Gikonyo, J. considered and dismissed an application similar to the instant application and stated:

“Instead of filing its defence to the suit, the Applicant filed the present Application on the 24th June 2013. The Application was, therefore, filed Fourteen (14) days after the filing of the Memorandum of Appearance. Section 6(1) of the Act is clear, unambiguous and unequivocal, in that a party applying for a stay of proceedings, shall apply not later than the time when that party enters appearance or files any pleadings. This Application should have been filed on the 10th June, 2013 together with the Memorandum of Appearance and not Fourteen (14) days later.”

11. And in *Charles Njogu Lofty v Bedouin Enterprises Ltd* [2005] eKLR, the leading authority on the issue of stay of proceedings, the Court of Appeal stated:

“We respectfully agree with these views so that even if the conditions set out in paragraphs (a) and (b) of section 6 (1) are satisfied the court would still be entitled to reject an application for stay of proceedings and referral thereof to arbitration if the application to do so is not made at the time of entering an appearance, or if no appearance is entered, at the time of filing any pleading or at the time of taking any step in the proceedings.”

12. Duly guided, it follows that the instant Application, having been filed long after the Defendant filed his memorandum of appearance offends the mandatory provisions of Section 6(1) of the Act.

13. In the end and in view of the foregoing, this Court finds that the Application dated 29.5.24 lacks merit and the same is dismissed with costs to the Plaintiffs.

DATED, SIGNED AND DELIVERED IN MALINDI THIS 17TH DAY OF APRIL 2026

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M. THANDE

JUDGE

