



REPUBLIC OF KENYA



Mutuura v Sidland Construction Limited & 4 others (Miscellaneous Civil Case E075 of 2025) [2026] KEHC 4471 (KLR) (12 March 2026) (Ruling)

Neutral citation: [2026] KEHC 4471 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CIVIL CASE E075 OF 2025**

EM MURIITHI, J

MARCH 12, 2026

BETWEEN

FELIX GITONGA NTHIGA MUTUURA PETITIONER

AND

SIDLAND CONSTRUCTION LIMITED 1ST RESPONDENT

SIDERA JOHN ISAAC OWINDO 2ND RESPONDENT

KENNEDY ODHIAMBO SIDERA 3RD RESPONDENT

JANE AWINJA SIMTYU 4TH RESPONDENT

JAMES MANGERERE 5TH RESPONDENT

RULING

1. The applicant filed Originating Summons dated 26th September, 2025 seeking the following orders:
 1. Spent.
 2. That this Honourable Court be pleased to grant the Applicant leave to commence arbitration proceedings and issue an arbitration order.
 3. That this Honourable Court be pleased to issue an order directed to the Respondents to mandate them to appear for arbitration before Arbitrator Laurettah Osoro.
 4. That the court be at liberty to make such further and other orders that it may deem fit to meet the ends of justice.
 5. That the costs of this application be borne by the Respondent.
2. The application is based on the grounds on the face of the application and the supporting affidavit of the applicant setting out the applicant's case that Sidland Construction Limited was incorporated on



- 4th April, 2013 and he was a Director of the Company since its incorporation. He heavily invested in the 1st Respondent Company as a Director and under the instructions of the co-director Sidera John Isaac Owino. In the year 2022 he learnt through reliable sources that his co-director had illegally and fraudulently forged his signature and removed him as a director of the 1st Respondent Company.
3. The applicant avers that his advocates on record wrote a letter to the Respondents informing them of their misdeeds, irregularities, fraud and illegalities.
 4. Further, the applicant avers that Arbitrator Laurettah Nyanchoka accepted the appointment to arbitrate over the dispute of his illegal removal as a Director of the 1st Respondent Company. He instructed his Advocates to write to the Respondent's Counsel on their intention to commence arbitration before Arbitrator Laurettah Nyanchoka. The time to tender has lapsed and it is apparent that the Respondents are unwilling to commence arbitration proceedings hence the reason he has filed this Application.
 5. Lastly, as long as the arbitration is delayed, he will continue to suffer greatly. The application is therefore most urgent and ought to be heard forthwith.
 6. The Respondents filed a Replying Affidavit that the Applicant lawfully resigned and was removed as a director/shareholder of the 1st Respondent in accordance with the guidelines under Companies Act, 2015 and the board resolutions passed at the duly convened meeting held on 16th April 2018. Currently the 1st Respondent has only two (2) Directors /Shareholders as shown in the latest CRI2 Search of the company. The entries on the register are prima facie evidence of the 1st Respondent's current Directorship/Shareholding which clearly excludes the Applicant as a Director or Shareholder and therefore he is not bound by the Articles of Association of the Company. The 4th and 5th Respondents are in no way currently associated with the company and therefore not answerable to this application.
 7. The respondents aver that the Applicant has also attached the same Board Resolutions duly signed and dated, Transfer of Shares duly franked and stamped, CR9 and his own Letter of Resignation as a Director/Shareholder to the 1 Respondent as from 16th April 2018 which he affirms to be true copies of what was filled and effected by the Registrar of Companies. Upon his lawful resignation and removal, the Applicant ceased to hold any capacity in the 1st Respondent company and has no locus standi to invoke the arbitration clause in the Articles of Association of the company, which only binds the Company and its members.
 8. Further, there exists no arbitration agreement binding the Applicant and the Respondents within the meaning of Section 4 of the Arbitration Act, 1995. Lastly, the respondents aver that the allegations of forgery and fraud are not capable of settlement by arbitration and falls outside the jurisdiction of an arbitral tribunal pursuant to Section 3 of the Arbitration Act.
 9. The applicant filed a supplementary affidavit in response to the Replying affidavit, that the respondents have absolutely no qualifications in the area of verification of signatures and he has presented the forged documents to a documents examiner and the results of that report are the reason of instituting a suit against the respondents jointly.
 10. The applicant avers that in response to paragraph 7 of the Replying affidavit, the respondents acts of illegally removing him as a Director cannot place him outside the purview of having his matter arbitrated under the Articles of Association which he participated in execution of its signatures.
 11. Further, the applicant avers that in response to paragraph 8-9 of the Replying affidavit that the respondents are absolutely ignorant of the whole gist of their application. The forgery masterminded by the 2nd respondent in removing him as a director cannot be more glaring. He reiterate the contents



in his application and emphasize that to date he has never resigned as a director of the 1st Respondent Company.

12. Lastly, in response to paragraph 11-13 of the Replying affidavit, the issues raised cannot be determined by this Court at this preliminary stage as they are matters that can be sufficiently handled by an arbitrator in accordance to Article 34 of the Memorandum and Articles of Association of the 1st Respondent.

Applicant submissions

Whether there exists a dispute between the parties herein

13. It is apparent that there exists a dispute between the parties herein. In a nutshell the applicants contend that he was a director of the 1st Respondent Company from the point of its formation and he never at any instance ceased to be a director of the Company. He annexed evidence to demonstrate that he conducted due diligence and realized that the 2nd to 5th Respondents forcefully removed him as Director of the 1st Respondent Company without his knowledge an act he deems to have been fraudulently orchestrated against his will. The Respondents have proceeded to deny such removal even in the absence of evidence and this therefore makes it a dispute that should be heard and determined by the arbitration tribunal.

Whether this matter should be referred for arbitration

14. Clause 34 of the Articles of Association (annexed as FNM 1 in the supplementary affidavit) of the 1st Respondent Company there is a provision which states that:

“Whenever any differences arise between the Company on one hand and any of the members their executors, administrators or assigns on the other hand, touching the true intent or construction, or the incidents, or consequences of these Articles, or of the statutes or touching anything then or thereafter doe, executed, committed or suffered in pursuance of these articles or any claim or account of any such breach or alleged breach or otherwise relating to the premises, or to these Articles or any statutes affecting the Company or to any of the affairs of the Company, every difference shall be referred to the decision of an arbitrator to be appointed by the parties in difference, or if they cannot agree upon a single arbitrator to the decision of two arbitrators, or whom one shall be appointed by each of the parties in difference”.

15. The applicant relies on *Mobile One to One Ltd v Safaricom Limited* (Miscellaneous Civil Application E703 of 2024) [2025] KEHC 7637 (KLR) (Commercial and Tax) (30 May 2025) (Ruling), where the Court considered a matter similarly and closely related to this one and eventually held that the matter be referred for arbitration. The facts and determination were as follows:

“Both parties have invited this Court to determine whether the dispute should be referred to arbitration. The applicant claims a breach of contract by the respondent who has sought to terminate the agreement between the parties. It is evident that the applicant has taken substantive steps in pursuit of arbitration, including initiating the process for the appointment of an arbitrator through the Chartered Institute of Arbitrators. Clause 22.2 of the Enterprise Dealer Agreement expressly provides that disputes arising under the contract which are not capable of amicable resolution shall be referred to arbitration. The existence of an arbitration agreement and the procedural steps undertaken by the applicant reinforce



the appropriateness of referring the matter to arbitration in accordance with the parties' contractual obligations.

33. In the premises, the Court is satisfied that a competent and justiciable dispute exists between the parties, which properly falls within the ambit of the arbitration agreement. Consequently, and in keeping with the principle of party autonomy and the policy of minimal judicial interference in arbitral matters, the dispute shall be referred to arbitration.

Respondent submissions

Whether there exists valid arbitration agreement between the applicant and the Respondents?

16. The cornerstone of arbitration is party autonomy and consent, embodied in a valid arbitration agreement.
17. Section 3 of the *Arbitration Act*, 1995, defines an arbitration agreement as “an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not”.
18. The purported basis for arbitration is the arbitration clause within the Articles of Association of Sidland Constructions Limited, the 1st Respondent herein. The Applicant ceased to be a member/ shareholder of the 1st Respondent on 16th April, 2018 upon the legal transfer of all his shares as evidenced by the Transfer Forms, the Board Minutes, Letter of resignation and the consequent update to the register of members reflected in the current CR12.
19. A non-member cannot purport to Invoke the contractual rights and mechanisms (including arbitration) reserved for members. He lacks the Locus standi to do so. Therefore, there exists no arbitration agreement/clause binding the Applicant and the Respondents within the meaning of Section 3 and 4 of the *Arbitration Act*, 1995.

Whether allegations of fraud and forgery are subject to arbitration?

20. The Applicant's entire claim is predicated on serious allegations of criminal conduct; forgery of signatures and fraudulent fabrication of company records. It is trite law, stemming from the common law and statute, that disputes involving allegations of crime are not suitable and not subject to private arbitration and *Arbitration Act*, 1995.
21. Section 3 of the *Arbitration Act*, 1995, while not providing an exhaustive list, preserves the inherent jurisdiction of the High Court over matters that are not capable of settlement by arbitration. The nature of the accusations and allegations by the Applicant therefore doesn't therefore fall within the armpit of the *Arbitration Act*, 1995.
22. The respondents submit that, to refer such grave allegations, which essentially accuse the Respondents of criminal offences, to a private arbitrator would be contrary to public policy and principles of common law.

Issues

23. Whether a valid arbitration agreement exists.
24. Whether this matter should be referred for arbitration.



Analysis

Whether a valid arbitration agreement exists

25. The Applicant relies on Clause 34 of the Articles of Association of the 1st Respondent, which provides for arbitration of disputes between the Company and its members touching on the affairs of the Company.
26. The Respondents contend that the Applicant ceased being a director and shareholder on 16th April 2018 and therefore lacks locus standi to invoke the arbitration clause.
27. The Applicant disputes the alleged resignation and transfer of shares, contending that the documents relied upon are forgeries.
28. It is not in dispute that the Articles of Association contain an arbitration clause. The critical question is whether the Applicant is bound by and entitled to invoke it.
29. The Respondents rely on CR12 records showing the Applicant is no longer a member. However, the Applicant challenges the validity of those records on grounds of fraud and forgery.
30. At this stage, this Court is not called upon to determine whether the resignation was genuine or forged, which determination goes to the merits of the dispute.
31. In *Anne Mumbi Hinga v Victoria Njoki Gathara* [2009] eKLR, the Court of Appeal held that where parties have agreed to refer disputes to arbitration, courts must respect that agreement and decline to delve into merits of the dispute.
32. The dispute herein concerns alleged unlawful removal of a director and shareholder. It is a matter touching on the affairs of the Company.
33. Whether the Applicant validly resigned or was fraudulently removed is itself a dispute arising from and relating to the Articles and company affairs. The same is properly determinable by the arbitral tribunal.

Whether this matter should be referred for arbitration

34. The Respondents argue that allegations of forgery and fraud are criminal in nature and therefore not arbitrable.
35. In *Synergy Industrial Credit Limited v Cape Holdings Limited*, [2019] eKLR, the Court held that disputes touching on commercial fraud between parties to a contract may be arbitrated unless public policy considerations dictate otherwise.
36. The allegations herein concern alleged forgery of resignation and share transfer documents. These are matters intertwined with company governance and contractual relationships. They do not involve general prosecution of criminal offences but determination of civil consequences between parties. There has no been shown to be any pending or impending criminal prosecution in the matter.
37. Moreover, the pendency of arbitration proceedings is also no bar to criminal prosecution sec 193A of the Criminal Procedure Code.
38. Allegations of fraud in the circumstances of this case do not render the dispute incapable of arbitration.



Orders

39. Accordingly, for the reasons set out above, the Court finds that the dispute between the Applicant and the Respondents should be referred to arbitration pursuant to Clause 34 of the Articles of Association of the 1st Respondent.

40. There shall be no orders as to costs.

Order accordingly.

DATED AND DELIVERED THIS 12TH DAY OF MARCH 2026.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Wambui Gitau for the Applicant.

Mr. Oruako for the Respondent.

