Alliance of Local Communities in Hardship Area's v Life & Peace Institution (LPI) & another (Civil Suit E001 of 2026) [2026] KEHC 5453 (KLR) (22 April 2026) (Ruling)

Neutral citation: [2026] KEHC 5453 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MARSABIT

CIVIL SUIT E001 OF 2026

FR OLEL, J

APRIL 22, 2026

BETWEEN

ALLIANCE OF LOCAL COMMUNITIES IN HARDSHIP AREA'S .... PLAINTIFF

AND

THE LIFE & PEACE INSTITUTION (LPI) ..... 1ST DEFENDANT

JUDY MCCALLUM ..... 2ND DEFENDANT

RULING

1. The plaintiff initiated this suit vide their plaint dated 28th January 2026 seeking several prayers including a declaration that the termination of their agreement dated 1st January 2024 was undertaken in a unilateral manner and therefore was null and void, and also sort for an order that the defendant's be directed to settle their unpaid pending bills for work done valued at Kshs.121,141,188/=. Simultaneously the they filed a notice of motion application seeking to restrain the defendants from further implementing the project known as, "Mobility and Movement; Cross-Border Resilience in Moyale".

2. In response, the Defendants filed a Notice of preliminary objection dated 5th February 2026, wherein they raised the following grounds of objection, namely that;

    a. That this Court lacks jurisdiction to hear and determine this suit by virtue of an express arbitration clause contained in the project implementation agreement dated 1st January 2024, specifically Article 21.2, which mandates that disputes arising therefrom be resolved through arbitration

    b. That the plaintiff/Applicant has approached this court prematurely and in disregard of the agreed dispute resolution mechanism contrary to section 6(1) of the *Arbitration Act*, having failed to invoke arbitration as contractually required.

c. That the dispute before the court squarely arises from and relates to contractual obligations governed by the said project implementation agreement, and is therefore not justiciable before this court at first instance.

d. That pursuant to Article 17 of the Pre-training Agreement which has formed a major part of the plaintiff/applicants suit, all disputes arising therefrom are expressly agreed by the parties to be resolved in Sweden, thereby ousting the jurisdiction of kenya courts and conferring exclusive jurisdiction to the court in Sweden.

e. That the plaintiff/Applicant is bound by the terms of the agreement it voluntarily executed and cannot circumvent the agreed terms by instituting court proceedings.

f. That by dint of Section 6 and 10 of the *Arbitration Act*, this Honourable court is expressly prohibited from intervening in matters governed by an arbitration agreement, save as provided under the Act.

g. That the suit as filed is therefore premature, incompetent, misconceived, and an abuse of the court process, and ought to be struck out and/or stayed in its entirety pending arbitration

3. The defendant thus urged this court to allow the preliminary objection raised and be pleased to either stay the suit and/or strike it out based on Article 17 of the pre-teaming agreement, which provided that the parties would resolve all their disputes under the Swedish judicial system.

Determination

4. I have considered the pleading filed and specifically the issues raised in the preliminary objection dated 5th February 2026. I have also considered the submissions filed by counsels for both parties and the decisions relied on in support thereof. The two issues which arise for determination is whether this court has jurisdiction to hear and determine this dispute given that the parties agreement expressly provides for arbitration and/or if the said process fails, pursuant to clause 17.3 of the pre-teaming agreement the parties should determine the said dispute in a Swedish court of competent jurisdiction.

5. The parameters for consideration in determining a preliminary objection are now well settled and in general it should raise only issues of law. The same were set out in the case of Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors (1969) EA 696 , Where at page 700 Law JA stated that:

> " A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration".

In the same case, at page 701, Sir Charles Newbold, P. stated:

> " A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop".

6. Before the project was implemented, the parties hereto and two other entities, namely Mercy Corps and Pastoralist concerns signed a pre-teaming agreement dated 8th August 2023 and clause 17 thereof expressly provide that;

   17.1 Any dispute related to this contract shall be settled amicably between the disputing parties.

   17.2 When this is not possible, the parties undertake to submit the case to arbitration by a third party accepted by agreement between the parties.

   17.3 If the dispute persists, a Swedish court will be competent to deal with the case.

   17.4 The parties hereby agree not to commence any court proceedings in relation to a dispute with other party (ies) in connection with this agreement until they have attempted to settle the dispute by mediation and the mediation has either terminated or failed.

   17.5 Unless otherwise agreed, the costs of any mediation carried out pursuant to this Article shall be shared equally between the disputing parties.

7. To implement one of the projects being funded by the 1st defendant, the plaintiff and the said 1st defendant further sign a subsequent, project implementation agreement (Project; Mobility and Movement; cross border resilience in Moyale) dated 1st January 2024, where at clause 21 it was expressly provided that;

   21.1 This agreement shall be governed by the laws of Kenya, and any dispute related to this agreement shall be settled amicably between the two parties.

   21.2 When this is not possible; the parties undertake to submit the case to arbitration by a third party accepted by agreement between the parties.

   21.3 If the dispute persists, a Kenya court will be competent to deal with the case.

8. The current dispute has its root in the agreement dated 1st January 2024, which expressly provides that the parties should amicably settle any dispute arising in implementation of the "Mobility and movement; cross -border Resilience in Moyale project," and when the same is not possible, the parties would submit to the jurisdiction of an arbitrator amicably appointed by both parties. The defendant therefore applies that this suit be stayed pending determination of the arbitration process, while the plaintiff opposes the same on the ground that the said clause is ambiguous, uncertain, incapable of being operationalized and thus cannot be implemented.

9. The presence of an arbitration clause in a contract does not operate so as to oust the court's jurisdiction to adjudicate on disputes which may arise from such contract. That notwithstanding, the court is required to show deference to the principle of party autonomy by allowing the parties the opportunity to resolve such disputes through arbitration, unless it can be shown that the said clause in invalid and/or is null and void.

10. In the case of Euromec International Limited v Shandong Taikai Power Engineering Company Limited (Civil Case E527 of 2020) [2021] KEHC 93 (KLR) (Commercial and Tax) (21 September 2021) (Ruling), which deals with defective arbitration clauses as follows: -

> " An arbitration agreement was null and void if it did not have a legal effect due to the absence of consent. A lack of capacity, such as when a party did not have the authority or permission to enter into an arbitration agreement, could invalidate the clause. An arbitration agreement could also be null, where the clause's language was so vague or ambiguous, that the parties'

intention could not be decided. However, defective arbitration clauses may nonetheless be interpreted by a court to give meaning to them, to save the parties' intention to arbitrate, as courts tended to interpret the clauses narrowly, to avoid giving a back door, for a party wishing to escape the arbitration agreement. The null and void language had to be read narrowly given a presumption of enforceability of agreements to arbitrate."

11. Though the plaintiff submits that Article 21.1 of the agreement dated 1st January 2024 is ambiguous, uncertain and incapable of enforcement. That averment is farfetched as the procedure to be used to appoint the arbitrator is clearly spelt therein and the said clause has no ambiguity whatsoever.The parties having entered into the said agreement freely and opted to oust other means of dispute resolution mechanisms other than arbitration, they must confidently walk down the said road to resolve their dispute. See James Heather - Hayes v African Medical and Research Foundation (AMREF) [2014] eKLR, where the Court held as follows: -

> " Arbitration is a choice of the parties insofar as alternative dispute resolution is concerned... It is not the duty of this court to redraw agreements by parties. The court can only come in to facilitate an interpretation and implementation of these contracts and no more."

12. On the second issue, as to whether this suit should be struck out, it is clear that the specific agreement concerning the implementation of the project and which is the subject of this dispute is the second agreement dated 1st January 2024 and it expressly provides that, "a Kenyan court will be competent to deal with the case, if the arbitration proceeding fails to bear fruit. This suit therefore can only be stayed pursuant to Section 6 of the *Arbitration Act* and not struck out as suggested as the defendant.

C. Disposition

13. The preliminary objection dated 5th February 2026 therefore has merit. This suit is therefore stayed pending determination of the Arbitral proceedings to be initiated by the parties to determine the dispute herein.

14. The costs of these proceedings will be in the cause.

15. It is so ordered.

READ, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 22ND DAY OF APRIL 2026.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED ON THE VIRTUAL PLATFORM, TEAM THIS 22ND DAY OF APRIL 2026.

In the presence of: -

..... Plaintiff

..... Defendant

..... Court Assistant