

alleged earn-out amount under the Agreement. It is his position that the dispute falls squarely within the scope of Clause 16 and ought to be resolved through the agreed alternative dispute resolution mechanism.

4. The Plaintiff opposes the application through the Replying Affidavit of its Managing Director, contending that the Defendant has failed to pay an earn-out amount of Kshs. 7,000,000/= and that the dispute arose from the Defendant's own conduct in undermining the performance of the acquired business. The Plaintiff further asserts that it made attempts at amicable settlement and that the Defendant frustrated the same.
5. The Plaintiff's position is that Clause 16 does not render arbitration mandatory, and that Clause 16.4 preserves the right of a party to approach the Court for interim relief notwithstanding the dispute resolution mechanism. It is therefore urged that this Court retain jurisdiction and ought not to stay the proceedings.
6. The application was heard by way of written submissions. The Defendant/Applicant's submissions are dated 1st September 2025, while the Plaintiff/Respondent's submissions are dated 11th September 2025.
7. The Defendant maintains that the conditions set out under Section 6(1) of the Arbitration Act have been satisfied, namely that there exists a valid arbitration agreement, that the dispute falls within its scope, that the application was

made timeously, and that no statutory exception has been demonstrated.

8. On its part, the Plaintiff submits that the Court retains jurisdiction to grant interim relief and that the arbitration clause cannot be invoked to defeat access to justice or to bar the Court from intervening where appropriate.

Analysis and determination

9. Having considered the application, the affidavits on record, and the rival submissions, the sole issue for determination is whether these proceedings ought to be stayed and the dispute referred to arbitration in accordance with Clause 16 of the Agreement and Section 6 of the Arbitration Act.
10. **Section 6 of the Arbitration Act** provides in part as follows:

6(1) 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

11. It is not in dispute that the parties executed the Asset Purchase Agreement dated 22nd February 2023. Clause 16 thereof provides for a structured dispute resolution mechanism culminating in arbitration. That clause, in my view, constitutes a valid arbitration agreement within the meaning of Section 4 of the Arbitration Act.
12. It is equally not contested that the dispute herein, being one concerning the Plaintiff's entitlement to an earn-out payment under the Agreement, arises directly from the said Agreement and therefore falls within the ambit of Clause 16.
13. The record further shows that the Defendant entered appearance and promptly filed the present application without taking further steps in the proceedings. The requirement of timeliness under Section 6(1) has therefore been satisfied.
14. The Plaintiff's principal argument is that Clause 16.4 preserves the jurisdiction of this Court and permits recourse to the Court notwithstanding the arbitration clause.
15. In my view, that argument is not persuasive. Clause 16.4 must be construed holistically within the context of the entire dispute resolution framework. Properly interpreted, it preserves the Court's jurisdiction to grant interim or conservatory relief pending arbitration; it does not displace

or negate the parties' agreement to refer the substantive dispute to arbitration.

16. This position is fortified by Section 7 of the Arbitration Act, which expressly empowers the Court to grant interim measures of protection notwithstanding the existence of an arbitration agreement, and must do so while respecting and upholding the parties' autonomy. (See **Safaricom Ltd v Ocean View Beach Hotel Ltd & 2 Others [2010] eKLR**).
17. Further, Section 10 underscores the principle of minimal court intervention, providing that no court shall intervene in matters governed by the Act except as expressly provided therein. This provision is a reflection of the doctrine of party autonomy, which lies at the heart of arbitration, and obliges the Court to give effect to the parties' chosen mode of dispute resolution.
18. In the present case, the Plaintiff has not demonstrated that the arbitration agreement is null, void, inoperative, or incapable of being performed, nor has it shown that the dispute falls outside the scope of the arbitration clause. On the contrary, the record shows that this Court previously referred the matter to mediation in accordance with the dispute resolution framework under the Agreement, but the parties were unable to reach a settlement. That being so, the next contractual step is arbitration, which this Court is bound to uphold.

19. In the premises, the Court is bound, in accordance with Section 6(1) of the Arbitration Act, to stay the proceedings and refer the dispute to arbitration.
20. Accordingly, the Defendant's Chamber Summons dated 25th April 2025 is merited and is hereby allowed on the following terms:
- i. These proceedings are stayed pending arbitration.*
 - ii. The dispute between the parties is hereby referred to arbitration in accordance with Clause 16 of the Asset Purchase Agreement dated 22nd February 2023.*
 - iii. The costs of the application shall abide the outcome of the arbitration.*

It is so ordered.

RULING delivered virtually, dated and signed at **NAIROBI**

This **30th** day of **April** 2026.

P.M. MULWA
JUDGE

In the presence of:

Mr. Omenya for Plaintiff/Respondent

Ms. Kamau h/b for Ms. Kariuki for Defendant/Applicant

Court Assistant: *Lispa*