



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ELCLMISC NO E366 OF 2025

LUCY NJOKI

WAITHAKA.....RESPONDENT/APPLICANT

-VERSUS-

AARON AJEGA NANJERO1ST

APPLICANT/RESPONDENT

DORCAS AYOMA MBALANYA NANJERO.....2ND

APPLICANT/RESPONDENT

RULING

Introduction

1. This matter is in relation to property known as L.R NO 1870/VIII/204 2/272 herein referred to as the suit property.
2. Vide Notice of Motion application dated 3rd December 2024 the Applicants seek the following orders:
 - a. Spent
 - b. **THAT** all proceedings in miscellaneous application ELC MISC NO E366 OF 2025 be stayed pending arbitration
 - c. Costs of the application.
3. The application was premised on grounds as in the supporting affidavit sworn by Aaron Ajenga Nanjero where he deponed that the parties were bound by the arbitration clause that was in the sale agreement dated 4th June 2015 and that the

proceedings filed herein had been filed prematurely despite there being an arbitration clause. That the court is obligated under section 6 of the Arbitration Act to stay proceedings in matters subject to sale agreement the parties had entered into.

4. The respondent filed a replying affidavit sworn on 13th February 2026 indicating that the court had given valid orders in a judgement in High court civil suit no 12 of 2017 where the respondent was to remit interest that had accrued due to late payment of the purchase price, and the applicants were then to release completion documents to the respondent. That the respondent herein performed her part but the applicants despite the court order have failed to perform their part. That the application sought to implement a court order that and not based on the agreement which the court had already made a determination on hence any rights in the said agreement had been determined

5. That the arbitration exists to resolve a dispute between parties under an agreement and not stop the implementation of any court order

Applicant's Submissions

6. The applicant reiterated that there existed a binding sale agreement that ought to be binding to the parties being that

clause 22 provided for a dispute resolution mechanism. That the prayers being sought for in the respondent's application seeking injunctive orders are all remedies flowing from the sale agreement and can be determined independently.

That the applicants had demonstrated grounds to warrant stay of proceedings under section 6(1) of the arbitration Act relying on the case of **Eunice Soko Mlagui Vs Suresh Parmar & 4 others (2017) eKLR**

Analysis and Determination

7. The only substantive issue arising for determination is Whether the Applicants have met the conditions set to set aside the proceedings

A perusal through the sale agreement dated 4th July 2015 indicates at clause 22.1 *that any dispute arising between the parties hereto with regard to the interpretation, rights, obligations and/ or implementation of any one or more of the provisions of the agreement the parties shall as a matter of 1st instance attempt to resolve the depute amicable negotiation.*

The respondents herein claim that the application is to execute the court's judgement which has been made difficult with the conduct of the applicants and is not an issue under the said agreement.

I agree with the argument being that the issue of arbitration cannot be invoked at this stage being that the rights in the sale agreement have already been determined on. The court in its judgement dated 26th April 2024 determined the rights of the parties and each was to ordered to perform certain obligations in this case the applicants were to surrender completion documents which they have not to date, while the respondent was to settle the interest which she has thereby making one party be in default of the court orders.

The respondents through their application are seeking for orders to compel the enforcement of the decree emanating from the judgement and is not in any way related to the sale agreement and therefore section 6 of the arbitration Act cannot suffice.

Section 6(1) of the Arbitration Act No. 4 of 1995 is key. It provides that;

- 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 files any pleadings or takes any other step in the proceedings, 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 provision is mandatory but has a limitation. It is expressly provided that if the arbitration agreement is “null and void, inoperative or incapable of being performed,” and where there is no dispute between the parties with regard to matters agreed to be referred to arbitration. Where a party alleges these matters and they are proved, the court will not stay the proceedings and refer the matter to arbitration.
9. As already stated the arbitration clause has been overtaken by events as the rights over the property have been established and further the matter herein does not touch on any issues in the agreement and as such the conditions necessary for issuance of stay of proceedings orders have not been met.

Final disposition

The upshot of the foregoing is that that I grant the following orders;

1. The notice of motion dated 3rd December 2025 is not merited and is hereby dismissed.
2. Costs of the application be in the cause.

It is so ordered.

DATED, SIGNED and DELIVERED virtually at **NAIROBI** on this **29th**
of
April 2026.

MOHAMMED N. KULLOW
JUDGE

Ruling delivered in the presence of: -

Mr. Kabugu..... for the Applicant

Ms. Talu for Mugalo..... for the Respondents

Philomena W..... Court Assistant