



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Karunda v Keekorok Capital Ltd (Cause E064 of 2023)  
[2023] KEELRC 783 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEELRC 783 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI  
CAUSE E064 OF 2023  
DKN MARETE, J  
MARCH 28, 2023**

**BETWEEN**

**MARY WANJIRU KARUNDA ..... CLAIMANT**

**AND**

**KEEKOROK CAPITAL LTD ..... RESPONDENT**

**RULING**

1. This is an application by way of preliminary objections dated February 17, 2023. It comes out that:  

“This Honourable court lacks jurisdiction pursuant to the provisions of section 6 of the *Arbitration Act*.”
2. The claimant/respondent opposes the application vide grounds of opposition dated February 22, 2023 terming the objection a non-starter and frivolous.
3. It is the claimant/respondent’s further contention and submission that this being a court matter, it cannot be subjected to Arbitration as per section 75 of the *Labour Relations Act*, 2007.
4. Again, she argues and submits that section 6 of the *Arbitration Act*, 1995 or even clause 9 of the Employment contract cannot oust the jurisdiction of this court as conferred under article 162 of *the Constitution* and section 15 of the *Employment and Labour Relations Court Act*, 2011. This is a choice by the Claimant instead of Arbitration.
5. The Parties came to court for submissions of their various positions and reiterated their respective cases as set out.
6. Section 6 of the *Arbitration Act*, 1995 comes out as follows;

Stay of Legal proceedings



- “(1) A court before which proceedings are brought in a matter which is the subject of an arbitration agreement. 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.
- (2) Proceedings before the court shall not be continued after an application under subsection (1) has been made and the matter remains undetermined.
- (3) If the court declines to stay legal proceedings any provision of the arbitration agreement to the effect that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is no effect in relation to those proceedings.”

7. This is a straight forward matter. The application of section 6 of the *Arbitration Act*, 1995 is a primal and mandatory. This is because the Arbitration agreement or clause dictates the choice of the parties on matters touching on the contract. It must therefore be respected.
8. The law on section 6 of *Arbitration Act*, 1995 is succinct. No party would run away, evade or escape the intention and import of an arbitration agreement or clause where this refers matters of mutuality to arbitration in the first instance. Courts would be foolhardy to ignore this.
9. I am therefore inclined to allow the preliminary objection and return the parties to their initial and mutual agreement; arbitration.

**DELIVERED, DATED AND SIGNED THIS 28<sup>TH</sup> DAY OF MARCH 2023.**

**D.K. NJAGI MARETE**

**JUDGE**

Appearances

1. Mr. Munene instructed by Akide and Company Advocates for the Respondent/Applicant
2. Mr. Maina instructed by James Denis Law Advocates for the Claimant/Respondent.

