



**Emergency Medical Trainers Kenya Limited v Girls First Kenya LLC (Commercial Case E019 of 2024) [2025] KEHC 7796 (KLR) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7796 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MACHAKOS  
COMMERCIAL CASE E019 OF 2024**

**EN MAINA, J**

**MAY 29, 2025**

**BETWEEN**

**EMERGENCY MEDICAL TRAINERS KENYA LIMITED ..... PLAINTIFF**

**AND**

**GIRLS FIRST KENYA LLC ..... DEFENDANT**

**RULING**

1. By a plaint dated 6<sup>th</sup> December 2024 the Plaintiff sued the Defendants for Specific performance and in the alternative Interest, general damages for breach of contract and for general damages for inducing breach of contract and costs.
2. The Plaintiff simultaneously filed a Notice of Motion Application dated 22<sup>nd</sup> November 2024 seeking orders to restrain the Respondents from transferring students from its institution, from failing to meet their contractual obligation as to the payment of tuition, accommodation and upkeep fees, from paying examination fees to any other institution and from failing to pay for the examination fees under their program in December 2024.
3. The Defendants through a Notice of Preliminary objection dated 13<sup>th</sup> December 2024 opposed the Plaintiff's claim. It is their contention that this court has no jurisdiction to hear and determine this dispute in view of the arbitration clause in the Co-operation Agreement which is the subject of this case.
4. In rejoinder the Plaintiff averred that an injunction is an interim order and under Section 7 (2) of the *Arbitration Act*, this court has jurisdiction to grant the orders sought in the application.
5. Counsel for the parties canvassed the preliminary objection by way of written submissions. As at the time of writing this ruling, the Plaintiff has not filed submissions. On the other hand, Counsel for the Defendant submitted that the orders sought in the Application are final orders that prejudice the outcome of the case. That the orders as framed are not sought pending the hearing



of the arbitration and hence cannot be granted as they have an effect of resolving the dispute. The court was urged to dismiss the suit and application with costs. In support of its contention, counsel relied on the cases of *Mukhisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA 696*, *Vihar Construction Company Limited vs Uhani Limited* [2015] KEHC 6727 (KLR), *Mesback Kibunja Kaburi & 3 others vs Kirubu Kamau & 5 others; Central Highlands Tea Company Limited(interested party)*[2021] eKLR, *Vihar Construction Company Limited vs Uhani Limited* [2015] KEHC 6727, *Safaricom Limited vs Ocean View Beach Hotel Limited & 2 others* [2010] eKLR and *Jasbir Singh Rai & 3 others vs Tarlochan Singh Rai & 4 others* [2014] eKLR.

## Analysis and Determination

6. I have carefully considered the pleadings, the preliminary objection, the submissions and the cases cited. What does or does not constitute a preliminary objection was settled in the case of *Mukhisa Biscuit Manufacturing Co. Ltd V West End Distributors Ltd (1969) EA 696*, where the Court stated that;

“So far as I am aware, 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, a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

7. Even though the cooperation agreement was not annexed it is evident from the submissions of learned Counsel for the Plaintiff/Respondent that there was such an agreement and that the same contains an arbitration clause. It is trite that in such circumstances parties are bound by the arbitration clause and must first exhaust that mechanism before coming to court for settlement of the dispute. This is of course unless an issue as to validity of the arbitration agreement is raised or it is argued that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration. In so saying I am guided by Section 6(i) of the *Arbitration Act* which states:-

“Section 6 (i) Stay of legal proceedings

- (i) 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.”

8. In this case no argument has been raised as to the validity of the arbitration agreement nor is it contended that the dispute herein is not one which is subject to the arbitration clause. The parties ought therefore to go for arbitration.
9. As for the issue of interim or preliminary orders it is my finding that, were this court to grant the orders sought, it would have determined the dispute between the parties with finality even in the face of the arbitration clause. As I have already held that the parties herein ought to have gone for arbitration before coming to court, I decline to grant the interim orders.



10. I have been urged to dismiss the application and the suit. I have not heard counsel for the Respondent urge the court to stay the suit and refer the same for arbitration and in the premises, I uphold the preliminary objection and strike out the suit with costs to the Defendant/Applicant.

It is so ordered.

**RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 29<sup>TH</sup> DAY OF MAY 2025.**

**E.N. MAINA**

**JUDGE**

In the presence of:

Ms Kendi for Peter Waiyaki for Respondents

No appearance for the Applicant

Geoffrey – Court Assistant

