



REPUBLIC OF KENYA



KENYA LAW
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**Kamau v Conslog Engineering Services Limited (Miscellaneous Civil Application
E056 of 2024) [2025] KEHC 12017 (KLR) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12017 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
MISCELLANEOUS CIVIL APPLICATION E056 OF 2024**

EM MURIITHI, J

AUGUST 14, 2025

BETWEEN

SAMSON NGUGI KAMAU PETITIONER

AND

CONSLOG ENGINEERING SERVICES LIMITED RESPONDENT

RULING

1. This is a ruling on an application by Originating Summons under section 12 of the *Arbitration Act* 1995, Article 159 (2) (c) of the *Constitution* and Rule 3 (1) of the *Arbitration Rules* dated 4/7/2024 for appointment of an arbitrator for the hearing and determination of a construction works dispute between the parties, following an application dated 27/2/2025 under certificate of urgency seeking for an early hearing for the application of 4/7/2024.
2. The application was opposed by a Replying Affidavit sworn by the Respondent on 6/5/2025. It is objected that the applicant was frustrating the resolution of dispute by Alternative Dispute Resolution Mechanism through a third party - The County Government of Kirinyaga - appointed in this matter and now seeks arbitration by “forum shopping for tribunal he can arm twist or manipulate to make decisions in his favour.”
3. The Court has noted the report of the Third Party by letter dated 7/4/2025 signed by the County Solicitor to the effect that the ad-hoc third party dispute resolution panel made up of named officers of the Kirinyaga County Government “held three meetings, on 18th November 2024, 13th January 2025 and 10th February 2025. Both parties participated in the hearings in person. The parties however, did not reach an agreement and the dispute remains unresolved.”



4. The applicant cannot be faulted for following the provisions of the contract between the parties dated 2/10/2019, Clause 9 of which sets out the Arbitration Clause as follows:

“9. Any disputes from the contract will be referred to a third party and if unable to resolve, an arbitrator will be appointed in accordance with the applicable laws in Kenya.”

5. Taking cognisance of this Clause, Court (Mwongo, J.) on 7/10/2024 made the following directions:

“ Court:

1. The Court grants the parties 14 days in terms of Clause 9 of the Agreement to engage a third party to resolve the dispute.
 2. Should there be a failure to resolve by the 3rd Party, the Court to appoint an arbitrator or to require the appointment be done by the Chairman of the institute of Arbitrators.
 3. Mention on 4th November 2024.
 4. Parties to maintain written evidence of the attempt to resolve by the 3rd Party.
R. Mwongo, J.
07/10/2024”
6. In default of the resolution of the dispute by the third party, the Court must consider the appointment of the arbitrator. The Court must, however, guard against an appointment procedure which allows the one party to secure the appointment of arbitration tribunal which he can arm-twist to favour his cause.
7. In terms of section 11 (1) and (2) of the [Arbitration Act](#), the contract in this case provides for appointment of a single arbitrator.
8. Section 12 (2) of [Arbitrators Act](#), the appointment of arbitrators is designed for such protections by ensuring that arbitrators are appointed by each party independently, by mutual agreement, and in default of agreement of the parties by the Court, as follows:
2. The parties are free to agree on a procedure of appointing the arbitrator or arbitrators and any chairman and failing such agreement—
 - a. in an arbitration with three arbitrators, each party shall appoint one arbitrator and the two arbitrators so appointed shall appoint the arbitrator;
 - b. in an arbitration with two arbitrators, each party shall appoint one arbitrator; and
 - c. in an arbitration with one arbitrator, the parties shall agree on the arbitrator to be appointed.”
9. In this case, therefore, the Court shall allow the parties the leeway in section 12 (c) of the [Arbitration Act](#) to appoint a sole arbitrator and in default the Court shall give directions as to the procedure for the appointment of the single arbitrator for the dispute.

Orders

10. The Court shall allow the parties a time of fourteen (14) days to conclude the consultations that may lead to the appointment of the sole arbitrator.



11. Consequently, this matter shall be mentioned on 3/9/2025 for directions as to appointment of an arbitrator in the case.

Order accordingly.

DATED AND DELIVERED THIS 14TH DAY OF AUGUST 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. A. Thungu for the Applicant.

Ms. Gitau W. for the Respondent.

