



**Kimeu v Family Signature Limited & 2 others; Registrar of Companies (Interested Party) (Civil Case E106 of 2021) [2025] KEHC 12049 (KLR) (Commercial and Tax) (14 August 2025) (Ruling)**

Neutral citation: [2025] KEHC 12049 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL CASE E106 OF 2021  
PM MULWA, J  
AUGUST 14, 2025**

**BETWEEN**

**ANTONY MUNYWOKI KIMEU ..... PLAINTIFF**

**AND**

**FAMILY SIGNATURE LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ANILKUMAR VIRPAR MALDE ..... 2<sup>ND</sup> DEFENDANT**

**RAHAB MWANIKI KAROKI ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**THE REGISTRAR OF COMPANIES ..... INTERESTED PARTY**

**RULING**

1. This ruling concerns the 1<sup>st</sup> Defendant/Applicant's Chamber Summons application dated 23<sup>rd</sup> September 2024 brought under Section 6 of the *Arbitration Act*, 1995, Rule 2 of the Arbitration Rules, 1997, Section 3A of the *Civil Procedure Act*, and all other enabling provisions of the law. The Applicant seeks orders for stay of all proceedings pending reference of the dispute to arbitration and that the Court refers the dispute to arbitration in accordance with Clause 31 of the Company's Articles of Association. The application is supported by the affidavit of Rahab M. Karoko, the 3<sup>rd</sup> Respondent sworn on 24<sup>th</sup> September 2024.
2. The Applicant contends that the dispute is essentially between shareholders of the 1<sup>st</sup> Defendant and arises from allegations by the Plaintiff that his shares were fraudulently allocated to strangers and that he was dismissed as a director pursuant to company resolutions. It is argued that Clause 31 of the Articles of Association provides for resolution of disputes through arbitration, and that by filing suit



in Court, the Plaintiff has violated the parties' agreement. The Applicant asserts that it is willing and ready to proceed to arbitration and urges that the Court lacks jurisdiction to entertain the matter.

3. The Plaintiff opposes the application through Grounds of Opposition dated 20<sup>th</sup> November 2024, arguing that: the application is an abuse of the court process; the dispute arose long before the suit was filed yet was never referred to arbitration; the application is a scheme to delay the hearing of the suit while the Defendants continue to dissipate company assets; the application has been filed with unreasonable and unexplained delay; and it impedes the administration of justice and the Plaintiff's right to a fair hearing.
4. The application was canvassed by way of written submissions. The 1<sup>st</sup> Defendant/Applicant's submissions are dated 13<sup>th</sup> November 2024, while the Plaintiff's submissions are dated 5<sup>th</sup> February 2025.
5. I have considered the application, the affidavit in support and the grounds of opposition as well as the submissions. The only issue for determination is whether the suit ought to be referred to arbitration.
6. Section 6(1) of the *Arbitration Act*, 1995 provides:

“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.”
7. The Supreme Court in *Nyutu Agrovet Limited v Airtel Networks Kenya Limited & Another* [2019] eKLR reaffirmed that Courts must respect and enforce arbitration agreements as a manifestation of the principle of party autonomy, except in circumstances where statutory exceptions apply. Similarly, the Court of Appeal in *UAP Provincial Insurance Company Limited v Michael John Beckett* [2013] eKLR held that where a valid arbitration clause exists, the Court is bound to stay proceedings and refer the matter to arbitration provided the statutory conditions are met.
8. It is not disputed that Clause 31 of the Company's Articles of Association contains an arbitration clause. However, Section 6(1) is explicit that an application for stay must be made “not later than the time when that party enters appearance or otherwise acknowledges the claim.”
9. The record shows that the suit was instituted by a plaint dated 24<sup>th</sup> February 2021, later amended on 26<sup>th</sup> May 2023. The 1<sup>st</sup> Defendant entered appearance, admitted the jurisdiction of this Court, and filed pleadings without raising the arbitration clause. On 14<sup>th</sup> December 2023, the matter was confirmed for hearing on 5<sup>th</sup> March 2024. On that date, the hearing was adjourned at the instance of the 1<sup>st</sup> Defendant for failure to file an amended defence, and the matter was fixed for hearing on 1<sup>st</sup> October 2024. It is only on that hearing date that the 1<sup>st</sup> Defendant brought this application to the Court's attention.
10. These facts show that the 1<sup>st</sup> Defendant not only took several steps in the proceedings but actively submitted to the jurisdiction of this Court without invoking the arbitration clause at the earliest opportunity. The delay of more than three years from the filing of the suit is inconsistent with the prompt invocation contemplated under Section 6(1).



11. The law is settled that a party who takes steps in the proceedings before seeking a stay is deemed to have waived the right to rely on the arbitration agreement. In my view, the conduct of the Applicant amounts to acquiescence to the Court process and a clear election to litigate rather than arbitrate.
12. While this Court recognizes the sanctity of arbitration agreements, the conduct of the Applicant shows acquiescence to the Court process. The application has been brought at a late stage, after the matter had been set down for hearing, and in my view, granting it now would not serve the interests of justice but would instead undermine the principle of expeditious disposal of cases under Article 159(2)(b) of *the Constitution*.
13. For the foregoing reasons, I find that the application dated 23<sup>rd</sup> September 2024 is devoid of merit. It is hereby dismissed with costs to the Plaintiff.

**RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT NAIROBI.**

**THIS 14<sup>TH</sup> DAY OF AUGUST 2025.**

**PETER M. MULWA**

**JUDGE**

In the presence of:

Mr. Waweru h/b for Mr. Chege for Plaintiff

Ms. Were h/b for Mr. Njenga for 1<sup>st</sup> & 3<sup>rd</sup> Defendants

Court Assistant: Godfrey

