



**CHARTERED INSTITUTE OF ARBITRATORS KENYA BRANCH LIMITED
SUMMARY CASE LAW**

HCCOMM/E401/2019

WILSON CHEGE VS ASIF KARIM (THE ARBITRATOR) AND BRITAM GENERAL INSURANCE COMPANY

FACTS

Mr. Wilson Chege (the Defendant/Respondent) and Britam General Insurance Company (the Plaintiff/ Applicant) entered into an insurance policy agreement where the Plaintiff insured Mr. Wilson Chege's motor vehicle of registration number KBV 244T, Toyota Mark X vide a comprehensive insurance cover valid for the period 4th October, 2014 to 3rd October, 2015. The policy agreement contained an arbitration Clause 10 which provided a one-year time limitation within which a party is to refer the dispute to arbitration.

On 8th March, 2015, the Defendant's insured motor vehicle was involved in a road traffic accident. The Defendant lodged a claim with the Plaintiff for compensation under the policy but the Plaintiff repudiated liability. The Defendant sought the intervention of the Insurance Regulatory Authority which gave its opinion on 19th January, 2017 concurring with the Plaintiff's position. Being aggrieved with the opinion, the Defendant filed Civil Suit No. 7404 of 2017 at Nairobi against the Plaintiff. The Plaintiff applied under Section 6 of the Arbitration Act for stay of the proceedings in court and for the dispute to be referred to Arbitration on grounds that the insurance policy agreement provided for arbitration as the dispute resolution method. The Court allowed the application and Asif Karim, was appointed as the sole arbitrator. The Plaintiff later objected to the arbitrator's jurisdiction at the preliminary hearing on 22nd July, 2019 before the Arbitral Tribunal on grounds that the arbitration proceedings were time barred because of the one-year time limitation under the policy agreement for a party to institute arbitration proceedings. The arbitrator however disallowed the objection.

The Plaintiff moved the Court vide an application dated 11th November, 2019 under Sections 17 and 35 of the Arbitration Act and Sections 1A, 1B, 31 and 63 of the Civil Procedure Act seeking orders that the court set aside the Tribunal's findings on jurisdiction and court terminate the arbitral proceedings for lack of jurisdiction.

The Plaintiff's advocate submitted that parties are bound by the terms of the contract thus the Defendant cannot deviate when the terms don't favour him. He stated that the disclaimer of the time limit was communicated to the Defendant on 11th April, 2016, the date when time began to run and the Defendant was bound to refer the matter to arbitration within the stipulated time. Consequently, the Defendant is caught up by the doctrine of laches. He submitted that the arbitrator exceeded his mandate by expanding the time limitation which the arbitration was to take place.

The Defendant on the other hand argued that the date which he received the IRA's reply is the effective date when the time began running and he then filed RMCC No. 704 of 2017 within time. He also disputed the validity of the arbitration clause which reduced the time limitation to 1 year for the reason that Section 4(1)(a) of the Limitation of Actions Act provides for 6 years period of limitation for actions founded on contract and that any contract limiting the limitation periods prescribed in the act is null and void for attempting to override statute.

ISSUE

Whether the arbitral proceedings before Mr. Aasif Karim (Arbitrator) should be terminated for lack of jurisdiction?

RULE

Section 17 of the Arbitration Act.

HOLDING

The Court found the Applicant's application dated 11th November, 2019 to be merited. The Court allowed the application and set aside the Tribunal's award on jurisdiction published on 3rd October, 2019. The Court further ordered that the arbitral proceedings before the Arbitrator, Mr. Asif Karim be terminated for lack of jurisdiction and costs of the application be paid to the Applicant by the Respondent.

RATIONALE

In determining the issue, the Court stated that an arbitrator's jurisdiction flows from an arbitration agreement and subject to the Arbitration Act. No jurisdiction is given to the Arbitral Tribunal as a matter of right or inherence or by statute. If the parties voluntarily contract and limit the period within which to refer their dispute to arbitration like in this case, the arbitrator has no jurisdiction to extend the period. Therefore, by entertaining the dispute, the arbitrator exceeded his jurisdiction. Lastly, the limitation of time as agreed by parties, like all other consensual agreements, cannot be said to offend the provisions of the Limitation of Actions Act nor can the Court re-write the parties' contract.



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