



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

HCCOMMMISC /E120/2021

NORTHWOOD DEVELOPMENT COMPANY LIMITED VS SHUAIB WALI MOHAMMED

FACTS

The Applicant filed an Originating Summons dated 18th February 2021 seeking an order that the court sets aside the Arbitrator's Ruling dated 2nd February 2021 issued in Arbitration proceedings between the parties dismissing the Applicant's Preliminary Objection dated 14th January 2021 and substitute it with an order of the Court upholding the said Preliminary Objection. In the Originating Summons, the Applicant averred that the Respondent's cause of action arose in January 2012 and that the arbitral proceedings were commenced on 31st May 2018, over seven years after the cause of action arose, hence the arbitration was time barred. The Applicant further avers that the Tribunal lacks jurisdiction to hear and determine the dispute. The Respondent opposed the Originating Summons on grounds that the Applicant's Preliminary objection was premised on Section 4(1) (a) of the Limitations of Actions Act and an assertion that the Arbitrator lacked jurisdiction to determine the dispute. He also relied on the grounds that there are exceptions to that section; which include instances where the claim is acknowledged or payments are made in respect of the claim. Further, he relied on the ground that the right arises on and not before the date of acknowledgment or the last payment. In this instance, the applicant had acknowledged the debt and therefore the limitation period began to run after the acknowledgment. The Respondent further averred that in the view of the exceptions to Section 4 of the Limitations Act, it is impossible to determine when the Respondent's right of action accrued without hearing evidence and hence the Preliminary Objection is unsustainable.

ISSUES

1. Whether the Arbitral Tribunal is bound by the general pleading that "Jurisdiction of this Tribunal is admitted" even where none exists?
2. Whether the Limitation of Actions Act limits jurisdiction of an arbitral Tribunal?
3. Whether failure to plead limitations of actions in the main pleadings renders a preliminary objection thereon unsustainable?
4. Whether the Applicant's preliminary objection dated 14th January 2021 is well merited?

RULE

The Arbitration Act, Section 17

The Limitation of Actions Act, Section 4

The Limitation of Actions Act, Section 26

HOLDING

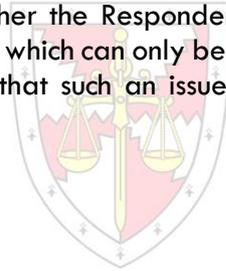
The Court found that the Applicant had not established any grounds for the Court to interfere with the Arbitrator's ruling dated 2nd February, 2021, hence dismissed the Originating Summons application with no order as to costs.

RATIONALE

In dismissing the Applicant's application, the Court stated that the Applicant's objection was not raised as required as per Section 17 of the Arbitration Act. The Section confers on the Arbitral Tribunal the power to rule on all jurisdictional issues pertaining to its own competence to adjudicate on a matter. The court stated that there is no jurisdiction given to the Arbitral Tribunal as a matter of right or inherence or by statute, rather, the jurisdiction of the arbitral tribunal is derived through the Arbitration Clause or Arbitration Agreement between the parties. The Court observed that the arbitral tribunal is bound by the agreement between the parties therefore Jurisdiction of the Arbitral Tribunal was admitted.

The court relied on a passage of the Halsbury law that states that parties to an arbitration agreement may if they wish, contract that no arbitration proceedings shall be brought after the expiration of some shorter period than that applicable under the statute. The Court further outlined that there is a clear distinction between jurisdiction and limitation of actions. Limitation only limits a party's right to institute a claim which is statute barred, whereas absence of jurisdiction connotes that the court or tribunal has no power to entertain the case.

Finally, the Court stated that the preliminary objection concerned a point of fact and not of law as the Applicant brought out the issue of whether the Respondent had committed fraud. The Court observed that this is a weighty issue of fact which can only be resolved by way of evidence and must be strictly proved. The Court stated that such an issue cannot be determined as a ground of preliminary objection.



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