Preliminary Objection Based on a Developer Joint Venture Arbitration Clause

Educational sample 066 | Environment and Land Court at Nairobi

Educational reconstruction based on a reported Kenyan decision. This is newly drafted text, not an original court filing, not a matter handled by our team, and not proof that a sample argument succeeded. Parties, parcels and identifying case details in the specimen are replaced with bracketed fields. Do not sign, swear or file it without checking your facts, jurisdiction, applicable rules and court directions.

Reconstructed formal document

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

CASE OR APPLICATION NO [insert appropriate reference]

[APPLICANT OR CLAIMANT] v [RESPONDENT OR DEFENDANT]

PRELIMINARY OBJECTION

1. TAKE NOTICE that the Defendants raise the following preliminary objection to the Plaintiff’s suit and motion dated [date], on the basis of the agreement and facts admitted or assumed in the pleadings.

2. The dispute pleaded arises from performance of the joint-venture agreement. Clause 12 provides for arbitration of disputes within its defined scope. Its actual wording is [insert complete relevant wording from the signed agreement].

3. The Plaintiff’s application, as framed, accompanies a suit asking the Court to resolve the substantive contractual dispute despite that agreed process. The Defendants contend that this intervention is inconsistent with the agreement and the applicable provisions of the Arbitration Act.

4. The Defendants rely on sections 6, 7 and 10 only to the extent applicable to the relief sought and the procedural stage. They distinguish a merits suit from a properly constituted application for interim protection in aid of arbitration under section 7.

5. The objection proceeds on the assumption that the pleaded agreement is binding and the pleaded dispute falls within the clause. It does not ask the Court to resolve disputed evidence about waiver, performance, title or the validity of the agreement as a preliminary matter.

6. If determining contractual scope or a statutory condition requires contested evidence, the Defendants request that the issue be addressed through the competent application procedure and do not maintain it as a pure preliminary objection.

7. The Defendants seek the disposition warranted by the applicable law and the actual pleadings, together with an appropriate costs order. A stay and reference under section 6 and striking out are distinct remedies; the requested outcome must be chosen and justified for this file.

8. The objection does not determine whether the developer performed its obligations or the landowner is entitled to compensation. Those questions remain subject to the agreed forum and any competent interim jurisdiction.

DATED at [place] on [date]. [Signature of party or advocate]. DRAWN AND FILED BY [name and address for service]. TO BE SERVED UPON [each affected party and address].

Use and evidence notes

The reported Nairobi ELC case struck out the suit and motion, but this sample does not treat that as the only statutory remedy in all arbitration cases. Section 6 timing and participation requirements need specific review. Do not hide disputed facts inside a purported pure legal objection.

Source and procedural limits

A landowner entered a joint venture for eighty apartments, transferred land to a project vehicle and complained that construction had not commenced despite approvals and meetings. The defendants raised a preliminary objection based on clause 12 requiring arbitration. The plaintiff did not file submissions despite opportunities to do so.

The Court upheld the objection and struck out both the injunction application and suit without costs. It did not determine the merits of the alleged development breach. A court application expressly seeking lawful interim protection in aid of arbitration is a different question from a suit asking the court to determine the contracted dispute.

Arbitration Act sections 6, 7 and 10 and the actual agreement. A preliminary objection must turn on a pure point of law on the assumed or agreed facts. Where contractual scope, waiver or participation requires disputed evidence, the correct application procedure must be considered rather than calling it a pure objection.

[2023] KEELC 21440 (KLR) — 9 November 2023. Source: https://new.kenyalaw.org/akn/ke/judgment/keelc/2023/21440/eng@2023-11-09

The linked original judgment may identify parties. This public specimen omits their names. Historical allegations are not presented as established facts. A different result in your own proceedings is possible.