Landowner Response to an Arbitration Preliminary Objection

Educational sample 069 | 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]

RESPONSE TO OBJECTION

1. The Plaintiff responds to the preliminary objection without denying the existence of the dispute-resolution clause. The issue is whether the objection can dispose of the specific court relief sought on a pure point of law.

2. The joint venture concerned eighty apartments and land transferred to a project vehicle. The Plaintiff alleges that construction did not commence despite approvals and meetings. These allegations identify the dispute; they are not asserted as established findings merely because an application was filed.

3. The Court should read the complete clause and the actual prayers together. If the relief is genuinely confined to interim preservation in aid of arbitration, the Plaintiff identifies that basis under section 7 and explains the subject matter and risk requiring preservation.

4. If the filed suit instead asks the Court to determine the substantive contractual breach, the Plaintiff must confront that framing. Calling final relief “interim” in submissions does not amend the pleadings or cure the selected route.

5. The Plaintiff submits that disputed questions of waiver, participation, scope or validity cannot be resolved by a preliminary objection that assumes agreed facts. Each such issue relied on is identified precisely and supported through the procedurally competent evidence or application.

6. The Plaintiff discloses the steps actually taken to initiate the agreed dispute process. An intention to arbitrate is not described as appointment of a tribunal. Any request for amendment, stay or directions must be expressly made through the appropriate procedure.

7. The Plaintiff seeks a determination which distinguishes the agreed merits forum from any lawful interim protection. If the existing pleading cannot support the requested protection, the Plaintiff seeks advice on the competent route rather than a declaration that the arbitration clause is irrelevant.

8. No substantive finding on fraud, development performance or title is requested through this response. The Plaintiff asks that disputed factual questions be reserved for their proper process and that costs be dealt with according to the circumstances.

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 plaintiff in the source case did not file submissions and the suit was struck out. This newly drafted response illustrates issues to assess; it is not an argument recorded as filed or successful in that case. Do not invent evidence of waiver or an imminent land sale.

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.