

KENYA / JUDGMENT

## CIC General Insurance Company Ltd v Bemms Limited [2025] KEHC 9981 (KLR)

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COURT

High Court

BEFORE

J Ngaah

CASE / FILE NUMBER

Miscellaneous Application E001 of 2024

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CIC General Insurance Company Ltd v Bemms Limited (Miscellaneous Application E001 of 2024)  
[2025] KEHC 9981 (KLR) (4 July 2025) (Ruling)

Neutral citation:

[2025] KEHC 9981 (KLR)

Republic of Kenya

In the High Court at Mombasa

Miscellaneous Application E001 of 2024

J Ngaah, J

July 4, 2025

Between

Cic General Insurance Company Ltd

Applicant

and

Bemms Limited

Respondent

## Ruling

1. The application before court is a motion dated 15 August 2024 expressed to be brought under section 1A, 1B and 3A of the Civil Procedure Act, cap. 21, section 35 (2) of the Arbitration Act, cap. 49 and order 50 rule 6 of the Civil Procedure Rules. The applicant prays: “1. That the application be certified as urgent at the first instance and its service be dispensed with.
2. That this Honorable Court in its entirety do set aside the Arbitral Award dated 4<sup>th</sup> April 2024.
3. That this Honorable. Court do set aside the Arbitral Award dated 18th July, 2024 in its entirety.
4. That costs of this Application be provided.”
2. The application is supported by the affidavit of Phylis Mutua who has sworn that she is the legal officer in charge of claims at the applicant company.
3. Mutua has further sworn that the cause of action which gave rise to the arbitration proceedings in issue is the applicant's repudiation of liability after the respondent's motor vehicle registration number KBC 011C/ ZD 3432 was involved in an accident on 22 January, 2015. At the material time, the vehicle was comprehensively insured by the applicant vide policy number 0021083/1/0079118/2011. However, the policy document had not been issued at the time of the accident.
4. It is the applicant's case that in the absence of the policy document, the terms and conditions of the insurance contract were not expressly laid out or agreed upon between the insurer and the insured. The insurer and the insured were, however, bound by the law of contract and the general principles of insurance.
5. Accordingly, in the absence of an arbitration agreement between the parties on the accident date, the entire arbitration process and the awards rendered on 4 April 2024 and 18 July, 2024 are irregular, null and void and should be set aside.
6. The applicant has also disputed the appointment of the arbitrator apparently because it did not participate in his appointment. The arbitrator was appointed by the Chartered Institute of Arbitrators and even after the appointment, the applicant was not properly notified. It is sworn that in the absence of an arbitration agreement, the arbitrator dealt with a dispute that was not contemplated by the parties.
7. That notwithstanding, the applicant as sworn that although the policy document issued on 27 October 2025 provided for arbitration agreement, there was no arbitration agreement on 22 January 20215 when the accident occurred.
8. Chanje Mussolini Kera, a director of the respondent company swore a replying affidavit opposing the application.

9. According to Kera, what gave rise to arbitration proceedings was the applicant's repudiation of liability after the respondent's motor vehicle registration number KBC 011 C ZD 3432 which was comprehensively insured by the applicant was involved in an accident on 22 January, 2015.
10. Prior to the said accident, the applicant had offered to insure the said vehicle and vide a "Pre-Insurance Vehicle Inspection Report". According to that report, the Vehicle Registration Number KBC 011 C was valued at Kshs. 3,560,000/- on 3 June, 2014. The respondent paid the requisite premium while the applicant covenanted to indemnify the respondent against any liability arising out of the use of the Motor Vehicle effective 12 October, 2014.
11. When the vehicle was involved in an accident, the applicant approved the repair of the trailer ZD 3432. Apparently, the parties could not agree on the amount payable for the repair of the motor vehicle. The applicant offered Kshs. 2,707,500/= which amount was not acceptable to the respondent.
12. In the wake of this disagreement, the applicant was invited to appoint an arbitrator. The arbitrator was eventually appointed by the Chartered Institute of Arbitrators.
13. Upon appointment of the arbitrator, a preliminary meeting was held on 19 September, 2017 in the presence of the applicant's advocates. In that meeting, the appointment of the arbitrator was confirmed. Thereafter, the applicant filed its defence and participated in the arbitration proceedings without any objection on their propriety until the award was made.
14. I have considered the application and the response thereto. I have also considered the submissions by counsel for the applicant and the respondent.
15. It is apparent on the face of the applicant's application that there are two arbitral awards that the applicant seeks this Honourable Court to set aside. The awards were respectively made on 4 April 2022 and 18 July 2024. The awards are challenged on, more or less, similar grounds which, in summary are, first, there was no arbitration agreement and, accordingly, the arbitrator was deficient of jurisdiction to entertain the dispute before him. Secondly, and in any event, the arbitrator was improperly appointed. Thirdly, the arbitrator determined matters that were not contemplated by parties.
16. As a preliminary question, the respondent has questioned the competence of this application for being filed out of time. This argument is based on section 35(3) of the Arbitration Act which is to the effect that an application for setting aside an arbitral award may not be made after three months have elapsed from the date on which the party making the application had received the arbitral award, or if a request had been made under section 34, from the date on which that request had been disposed of. To be precise, section 35(3) of the Act reads as follows: 35(3). An application for setting aside the arbitral award may not be made after 3 months have elapsed from the date on which the party making that application had received the arbitral award, or if a request had been made under section 34 from the date on which that request had been disposed of by the arbitral award.

17. The instant application was made on 29 August 2024 and, therefore, as far as the award of 4 April 2024 is concerned, the application to set it aside is made outside the limitation period.
18. On the question of whether there was arbitration agreement and, therefore, whether the arbitrator was seized of jurisdiction to entertain the dispute before him, section 17(2) of the Arbitration Act is clear that such a question must be raised not later than the submission of the statement of defence. This section reads as follows: 17. (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence, however, a party is not precluded from raising such a plea because he has appointed, or participated in the appointment of, an arbitrator.
19. There is no evidence that the applicant raised this issue as it was enjoined to under this provision of the law. Neither did the applicant exercise its rights under section 14(2) of the Act and challenge the appointment of the arbitrator within 15 days after becoming aware of the impugned appointment. According to section 14(2) of the Act: Failing an agreement under subsection (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the composition of the arbitral tribunal or after becoming aware of any circumstances referred to in section 13 (3), send a written statement of the reasons for the challenge to the arbitral tribunal, and unless the arbitrator who is being challenged withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
20. Thus, if the appointment of the arbitrator could not be mutually agreed upon as provided under section 14(1), then the applicant ought to have invoked section 14(2) to challenge the arbitrator within the prescribed timeline. In contrast, the record before the arbitrator, in particular the ruling of the arbitrator, shows that the applicant participated in the arbitration proceedings without any qualms on the appointment of the arbitrator or his jurisdiction.
21. The result is that section 5 of the Arbitration Act precludes the applicant from raising these issues at this stage. This section reads as follows: A party who knows any provisions of this Act from which parties may derogate or any requirement under the arbitration agreement has not been complied with yet proceeds with arbitration without stating his objection to such non-compliance without undue delay or if a time is prescribed, within such period of time, is deemed to have waived the right to object.
22. This is the reason, among other reasons I have given, why the applicant's application is misconceived, incompetent and an abuse of the due process of this Honourable Court. It is hereby dismissed with costs to the respondent. Orders accordingly.

SIGNED, DATED AND DELIVERED ON 4 JULY 2025 NGA AH JAIRUS JUDGE

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Prepared on 14 October 2026 · Esheria