

**IN THE REPUBLIC OF KENYA
IN A DOMESTIC ARBITRATION**

BETWEEN

BIMA SHEKAMETA BHAI – CLAIMANT

AND

PETER OKOTH – 1st RESPONDENT

PATRICK OKELLO - 2nd RESPONDENT

CALEB ODHIAMBO - 3rd RESPONDENT

DAVID YAGO - 4th RESPONDENT

REINHARD BONKE - 5th RESPONDENT

JAMES ONYANGO - 6th RESPONDENT

JOHN OTIENO - 7th RESPONDENT

DEMINAH OGWARI - 8th RESPONDENT

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INTERIM ARBITRATION AWARD
ON THE RESPONDENTS' OBJECTION

*(Delivered under sections 12, 13 and 17 of the Arbitration Act, 1995 and Articles 50(1) & 159(2)(c)
of the Constitution of Kenya)*

Juridical Seat: Migori, Kenya

Arbitrator: Isaac Aluochier, FCIArb

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The Parties

- 1 The Claimant is Bima Shekameta Bhai, a resident of Kawere area of Uriri Sub-County within Migori County. He is represented in these arbitral proceedings by Otieno David & Associates, Advocates, email address otienodadvocates@gmail.com, and Practice No. LSK/2025/003856. The Respondents are also all residents of Kawere area of Uriri Sub-County within Migori County. They are all represented by Tom Mboya & Co., Advocates, of Safaricom House, 2nd Floor, Migori-Isebania Road, Migori and of email address tommboyaadvocates@gmail.com.

Background and Procedural History

- 2 This arbitration was instituted by the Claimant through a **Statement of Claim dated 7th August, 2025**, followed by a **Request for Arbitration dated 10 August, 2025** under the administration of **Aluochier Dispute Resolution (ADR)**. Both the Statement of Claim and the request invoked the constitutional right under Article 50(1) of the Constitution of Kenya, 2010 to have disputes determined before an independent and impartial tribunal other than a court. 10
- 3 The dispute, as outlined in the Claimant's pleadings, concerns **compensation for destruction and loss of property**, with special and general damages claimed in excess of Kshs. 9,380,000.
- 4 Following the statutory and procedural timelines, the arbitral institution formally appointed **Isaac Aluochier, FCI Arb (2021)** as **Sole Arbitrator** by a letter dated 26 August 2025, following the Parties' failure to nominate any person as a sole arbitrator, and in accordance with Rule 7.3 of the Aluochier Dispute Resolution Arbitration Rules. 20
- 5 The Arbitrator accepted the appointment on the same date, declaring independence and impartiality in compliance with Rule 8.3.3 of the ADR Rules.

- 6 On 27th August, 2025, the Claimant filed an **Amended Statement of Claim**, joining additional Respondents and expanding the scope of claims. On 8th September, 2025, the Respondents, through **M/s Tom Mboya & Co. Advocates**, filed an **Objection** to the proceedings.
- 7 The Tribunal convened a **Preliminary Meeting** on 10th September, 2025 and issued **Procedural Order No. 1**, directing that the Objection be heard first by way of written submissions, after which an Interim Award would issue.
- 8 The Claimant filed his **Submissions in opposition** on 23rd September, 2025. The Respondents did not file any rejoinder.

The Respondents' Objection

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- 9 The Respondents raise the following grounds:
- 9.1 There is no commercial or contractual relationship, and hence no valid arbitration agreement exists.
- 9.2 The matters are both civil and criminal in nature, falling outside arbitral jurisdiction.
- 9.3 The issues, if intended for mediation, should be referred to **court-annexed mediation** under the Judiciary's mediation framework.
- 9.4 The appointment of the Arbitrator was **unilateral**, giving rise to apprehension of bias.
- 9.5 The matters can only be conclusively determined by the courts of law.

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The Claimant's Response

- 10 The Claimant argues that:
- 10.1 The tribunal is empowered to rule on its own jurisdiction under section 17(1) of the Arbitration Act.
- 10.2 The Respondents, having failed to participate in the appointment process, are deemed to have waived that right under section 12(3)(c) and (4) of the Act.
- 10.3 The dispute is civil and compensatory in nature, and thus arbitrable.
- 10.4 The invocation of court-annexed mediation misconceives the constitutional framework of Article 159(2)(c), which provides for **multiple autonomous ADR mechanisms**, including arbitration.

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Issues for Determination

11 The Tribunal identifies the following issues for determination:

- 11.1 Whether this Tribunal has jurisdiction to determine the dispute.
- 11.2 Whether the appointment of the Arbitrator was valid.
- 11.3 Whether the subject matter is arbitrable.
- 11.4 Whether the Respondents' call for referral to **court-annexed mediation** is legally sustainable.
- 11.5 Whether the Objection has merit.

Analysis and Findings

Issue 1: Jurisdiction and Competence of the Tribunal

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12 Section 17(1) of the Arbitration Act grants a tribunal power to rule on its own jurisdiction. The Claimant properly invoked Article 50(1) of the Constitution, which recognizes arbitration as a legitimate alternative to court adjudication.

13 The Tribunal finds that the arbitration was properly instituted under the Aluochier Dispute Resolution Arbitration Rules, 2025, which—consistent with Article 159(2)(c)—permit constitutional arbitration even in the absence of a traditional contractual arbitration clause.

14 Under Kenyan law, there exist three types of arbitration: contractual/consensual, statutory/legislative and constitutional. Contractual/consensual arbitration is covered by the Arbitration Act, 1995, though section 2 of the Act provides that the Act is not applicable in its entirety to all arbitrations, reading – ***“except as otherwise provided in a particular case, the provisions of this Act shall apply to domestic arbitration and international arbitration.”*** Statutory/legislative arbitration is provided for in a number of Acts of Parliament, including but not limited to section 33 of the Kenya Airports Authority Act, section 62 of the Kenya Ports Authority Act, section 83 of the Kenya Railways Corporation Act, section 29 of the Kenya Road Act, section 32 of the Intergovernmental Relations Act and section 56 of the National Government Constituencies Development Fund Act. Constitutional arbitration is provided for in Articles 1(3)(c), 10, 47, 50, 159, 165 and 189 of the Constitution. It should therefore be noted that contractual/consensual arbitration founded on an arbitration agreement is not the only basis for arbitrations in Kenya.

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Issue 2: Validity of Appointment

15 The record demonstrates that the institution notified all parties of its intent to appoint a sole arbitrator and allowed 15 days for nomination. The Parties – both the Claimant and the Respondents – neither participated nor objected within that period. Accordingly, under Rule 7.3 of the ADR Rules and section 12(3)(c)–(4) of the Arbitration Act, the appointment by the institution was valid and binding on all parties.

16 No evidence of bias or impropriety has been shown to warrant disqualification under section 13(3) of the Act.

Issue 3: Arbitrability of the Subject Matter

17 The dispute concerns alleged destruction and loss of property—purely civil matters 10 of compensation and liability. The Tribunal notes that while some of the facts could also attract criminal investigation, the reliefs sought are civil and compensatory.

18 Arbitration may proceed on the civil aspects even where parallel criminal investigations exist. While Article 50(1) of the Constitution provides that any dispute that can be resolved by the application of law can be decided before a court or, if appropriate, another independent and impartial tribunal or body, Article 50(2)(d) provides that it is the right of any accused person to a public trial before a court established under this Constitution. Article 50(2)(d) therefore limits criminal proceedings only to courts established under this Constitution, and is the only limitation to the Article 50(1) freedom of choice of forum as between a court and another independent and impartial tribunal in any 20 dispute that can be resolved by the application of law. As the remedies sought in the Amended Statement of Claim are not criminal, such as the payment of fines or imprisonment, the Amended Statement of Claim is not criminal in nature, and so is not for the exclusive jurisdiction of courts established under this Constitution.

Issue 4: The Call for Court-Annexed Mediation

19 The Respondents urge that if alternative dispute resolution is to be used, the matter should be referred to **court-annexed mediation** within the Judiciary’s framework.

20 The Tribunal finds this position **misconceived** in law and practice. Court-annexed mediation is a mechanism **within judicial proceedings**, conducted under the authority of the Chief Justice and applicable only to matters already filed in court. 30

- 21 Arbitration, by contrast, is an **independent and self-executing adjudicative process** under Part II of the Arbitration Act and Articles 50(1) and 159(2)(c) of the Constitution. It is not dependent on or subordinate to the court system.
- 22 Article 159(2)(c) explicitly promotes “**reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms**” as distinct and parallel methods. The Respondents cannot compel substitution of one mechanism (arbitration) with another (mediation) absent mutual consent of the parties. Section 31 of the Arbitration Act provides for settlement of a dispute by the parties during arbitral proceedings, and record of the settlement in the form of an arbitral award on agreed terms. The Arbitration Act therefore provides for and recognises negotiation, mediation and reconciliation – other alternative 10 dispute resolution mechanisms – within the arbitral process.
- 23 Further, section 59B(1) of the Civil Procedure Act, which governs court-annexed mediation, applies only to suits “**filed in court.**” This arbitration is a constitutionally independent proceeding under Article 50(1), and the Tribunal’s jurisdiction is autonomous of the Judiciary’s administrative mediation arm.
- 24 Consequently, the Tribunal holds that referral to court-annexed mediation is neither mandatory nor appropriate for this matter, which has already been lawfully commenced as an arbitration. Should the parties seek to resolve their dispute by way of mediation, they can do so within the already commenced arbitration framework, as provided for in section 31 of the Arbitration Act. 20

Issue 5: Whether the Objection Has Merit

- 25 The Tribunal finds that:
- 25.1 The proceedings were validly instituted.
 - 25.2 The Arbitrator’s appointment was proper.
 - 25.3 The matters are arbitrable.
 - 25.4 Court-annexed mediation is inapplicable.
 - 25.5 No credible ground for jurisdictional ouster has been established.

Disposition

- 26 The Tribunal accordingly makes the following orders:
- 26.1 The **Respondents’ Objection dated 8th September 2025** is **dismissed in its** 30

entirety.

26.2 The **Arbitral Tribunal retains full jurisdiction** to hear and determine the Claimant's claims.

26.3 The **appointment of the Arbitrator** was validly effected under the principles of section 12 of the Arbitration Act and under the Aluochier Dispute Resolution Arbitration Rules, 2025.

26.4 The Respondents' request for **court-annexed mediation** is **rejected** as misconceived and inconsistent with the governing constitutional and statutory framework.

26.5 The **costs** of this Objection are awarded to the Claimant, including the Respondents' half share of the preliminary stage fees (KSh 31,752 plus VAT) as set out in Procedural Order No. 1. 10

Directions on Further Conduct

27 The Respondents shall file their **Statement of Defence and any Counter-Claim** within **14 days** of this Award.

28 The Claimant shall file any **Reply** within **7 days** thereafter.

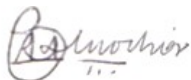
29 The Tribunal shall thereafter issue directions on the substantive hearing timetable.

Legal Status Of Arbitral Award

30 The provisions of section 32A of the Arbitration Act, 1995 ought to be considered. The section provides that except as otherwise agreed by the parties, **an arbitral award is final and binding upon the parties to it**, and no recourse is available against the award otherwise than in the manner provided by this Act. 20

Dated and signed at Rongo this 8th October, 2025

With the juridical seat being Migori, Kenya



Isaac Aluochier, FCIArb (2021)

Arbitrator

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