



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**MISCELLANEOUS APPL. NO. 239 OF 2019**

**KINYAE KITUKU SAMMY.....APPLICANT**

**VERSUS**

**KENCOM SACCO SOCIETY LIMITED.....RESPONDENT**

**R U L I N G**

1. *Kinyae Kituku Sammy (Kinyae)* prays, by the **Notice of Motion** dated **9<sup>th</sup> July 2019** for an order appointing a sole arbitrator to hear and determine the dispute between the parties herein. The arbitration clause is contained in the agreement for sale dated 4<sup>th</sup> November 2016 between the parties. That clause provides:

**29. ARBITRATION CLAUSE**

*All disputes and questions whatsoever which shall arise between the parties hereto touching the Sale Agreement or the construction or application thereof of any clause or thing herein contained or to the rights or liabilities of any party under this Sale Agreement shall be referred to the decision of a single arbitrator which arbitrator must be agreed by both parties and in accordance with the provisions of the Arbitration Act 1995 or any Act or Acts amending or replacing the same.*

2. When a dispute, relating to the performance and completion of the agreement for sale arose and pursuant to the arbitration clause, Kinyae appointed Mr Mbiriri Nderitu to arbitrate over the dispute. That arbitrator however declined his appointment due to the respondent's non-responsiveness. It is in that background Kinyae has applied to the court to appoint a sole arbitrator.

3. Section 12 (9) of the Arbitration Act provides this court with the power to appoint an arbitrator. Bearing in mind the provisions of that section I am inclined to appoint Samuel Mbiriri Nderitu. I note in his letter of 5<sup>th</sup> December 2018, Mr Nderitu confirmed that he is competent to take up the appointment of a sole arbitrator.

4. Accordingly, I hereby appoint Samuel Mbiriri Nderitu as the sole arbitrator to arbitrate over the dispute between Kinyae Kituku Sammy and Kencom Sacco Society Limited. There is no order as to costs in respect to the Notice of Motion dated 9<sup>th</sup> July 2019.

**DATED, SIGNED and DELIVERED at NAIROBI this 28<sup>th</sup> day of APRIL, 2020.**

**MARY KASANGO**

**JUDGE**

**ORDER**

In view of the measures restricting court operations due to the **COVID-19 pandemic** and in light of the Gazette Notice No 3137 of 17<sup>th</sup> April 2020 and further parties having been notified of the virtual delivery of this decision, this decision is hereby virtually delivered this **28<sup>th</sup>** day of **April, 2020**.

**MARY KASANGO**

**JUDGE**