



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**MISC APPLICATION NO. E043 OF 2018(OS)**

**THE MPESA ACADEMY LIMITED.....APPLICANT**

**-VERSUS-**

**LALJI MEGHJI PATEL & CO. LTD.....RESPONDENT**

**RULING**

1. I believe this ruling date was given by mistake of both the court and the learned advocate. There are two reasons why I say so and it will become apparent herein below.

2. The applicant *Mpesa Academy Limited* filed a chamber summons dated **4th July 2018**. That chamber summons is an interlocutory application. It ought to have had the foundation of a substantive suit. The chamber summons indeed state in its prayers that the prayers sought are pending the hearing and determination of an originating summons. That originating summons is not on court record. It seems that the originating summons was never filed by the applicant. This is evident from the court receipt and the court's assessment of fees which shows that there was no originating summons when the applicant filed the chamber summons. The fees assessed at the time the chamber summons was filed do not include an assessment for an originating summons. It follows that the chamber summons being an interlocutory application not founded on a substantive claim/suit is incompetent. It cannot stand.

3. The 2nd reason I say that the ruling date was set in error, is because the parties by consent before me on **24th October 2018** consented to the granting of the very orders this ruling was to consider. The order consented to by the parties on **24th October 2018** was to the effect that:

*“that an order be and is hereby granted forthwith staying the arbitral proceedings between the applicant and the respondent currently pending before the honourable arbitrator, Mr Tom Oketch, pending hearing and determination of the originating summons dated 4th July 2018”.*

4. Ofcourse as discussed above, there is no originating summons dated **4th July 2018** on record. But the fact remains that the parties consented to stay of arbitral process pending hearing and determination of the originating summons.

5. It follows that even if the applicant did file an originating summons which I have not sighted in this file, there being a consent as reproduced above, would prevent me from giving a ruling on whether or not to stay the arbitral process. This is because, the court would not have jurisdiction to set aside parties consent.

6. At the reading of this ruling, I will require the applicant to prove the filing of an originating summons in this matter and in default of such proof this action will be struck out and the interim consent order will consequently be set aside. The issue of costs will also be determined once the applicant confirms whether or not the originating summons was filed.

**DATED and SIGNED at NAIROBI this 24<sup>TH</sup> day of JULY, 2019.**

**MARY KASANGO**

**JUDGE**

***Ruling Read in Open Court in the presence of:***

Sophie.....**COURT ASSISTANT**

.....**FOR THE APPLICANT**

.....**FOR THE RESPONDENT**