



**REPUBLIC OF KENYA**

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

**COMMERCIAL & ADMIRALTY DIVISION**

**MISC. APPLICATION NO. 146 OF 2016**

**NAROK COUNTY GOVERNMENT.....APPLICANT**

**VERSUS**

**PRIME TECH ENGINEERING LIMITED.....RESPONDENT**

**AND**

**IN THE MATTER OF AN APPLICATION FOR SETTING ASIDE THE ARBITRAL AWARD ISSUED BY THE SOLE  
ARBITRATOR MR. KYALO MBOBU, CHARTERED ARBITRATOR ON 23<sup>RD</sup> MARCH, 2016**

**BETWEEN**

**PRIME TECH ENGINEERING LIMITED.....CLAIMANT/RESPONDENT**

**VERSUS**

**NAROK COUNTY GOVERNMENT.....RESPONDENT/APPLICANT**

**RULING**

1. This Court shall not make a substantive Decision in this matter as it shall be transferring it to the High Court at Naivasha for Disposal.
2. Narok County Government (the Respondent) has moved this Court through a Notice of Motion of 29<sup>th</sup> March 2016 seeking to set aside an Arbitral Award published on 23<sup>rd</sup> March, 2016. The Award is in favour of Prime Tech Engineering Ltd (The Claimant). The Dispute in respect to which the Award was made concerned a procurement contract dated 3<sup>rd</sup> July 2014 between the parties for improvement and gravelling works on roads in Narok County.
3. The Notice of Motion was opposed and also resisted through a Preliminary Objection dated 12<sup>th</sup> April, 2016. One of the Objections taken up by the Claimant is that the Notice of Motion is filed in the wrong forum as it should have been filed in the High Court at Naivasha where the matter commenced.
4. It is common ground that preceding the Arbitration , the Claimant filed a Miscellaneous Civil Application No. 5 of 2015 **Prime Tech Engineering Ltd vs. Narok County Government & 2 Others**(hereafter Misc. No. 1 of 2015) at the High Court of Kenya at Naivasha seeking some Protective Orders and secondly, that the Dispute between the parties be referred to Arbitration.
5. In those proceedings in which the Respondent participated, Meoli J. on 2<sup>nd</sup> February 2015, decided as follows,

**“In my view therefore, there is no ready connection between the Orders sought in Prayers 3 of the Chamber Summons and the Supporting Affidavit. Nonetheless, this being a matter subject to Arbitration, and in view of the half hearted opposition put up by the 1<sup>st</sup> Respondent, I would grant Prayer 5 of the Chamber Summons. Additionally, I do order that pending any other specific Interim Order that the arbitrator may deem fit to grant, there will be an order directed against the 1<sup>st</sup> Respondent to maintain the Status Quo as subsisting at the time the dispute broke out. Costs will b in the cause.”**

Prayer 5 which Her Ladyship granted was the Prayer seeking to have the Dispute referred to Arbitration.

6. The simple question raised by the Claimants objection is, in which High Court station should the present Application have been filed? Put differently, where is the correct forum or place for the Application.

7. There is no doubt that the High Court enjoys countrywide jurisdiction and so in terms of jurisdiction the High Court sitting at Nairobi is competent to hear the Application in much the same way as the High Court in Lodwar or Migori. What is critical is that the choice of forum or place needs to be informed by the Constitutional Imperative of Reasonable and Equitable Access to Justice. The question of convenience to parties being part of access. Article 48 on Access to Justice is the motivation for Section 12(1) of the High Court Organization and Arbitration Act which provides that,

**“12.1. The Chief Justice shall, in consultation with the Principal Judge, facilitate reasonable and equitable access of the services of the Court and establish at least one station of the Court in every County”.**

And even before the enactment of that Statute, The Chief Justice, using powers available to him under the Civil Procedure Act, established High Court sub-registries at Naivasha and Narok with effect from 1<sup>st</sup> April 2014 (Gazette Notice No.1923 of 24<sup>th</sup> March 2014). Naivasha Sub-registry has since become a fully fledged Registry, while the Judge at Naivasha is the visiting Judge for Narok.

8. The Arbitration Award that is the subject of this Application is the outcome of the Arbitration reference that was made in Misc. Application No.1 of 2015. Both the Claimant and Respondent participated in those proceedings and were quite happy to submit to the jurisdiction of the High Court at Naivasha. Neither questioned the forum or place. The subject matter of the Arbitration is in Narok where the Dispute arose and the seat of Government of the Respondent is at Narok. The natural forum or place for the aforesaid proceedings was either Naivasha or Narok.

9. It should therefore seem logical that any Application to the High Court in respect to the Arbitration should have been filed at the High Court in Naivasha. While the seat of Arbitration may have been at Nairobi, the Award may have to be enforced at Narok where the Respondent is domiciled. In the contemplation of the Arbitration Rules, 1997, Applications for setting aside or enforcement are to be made in the cause in which the Award has been filed. See Rule 4,

**“(1) Any party may file an award in the High Court.**

**(2)All applications subsequent to filing of an award shall be by summons in the cause in which the award has been filed and shall be served on all parties at least seven days before the hearing date.**

**(3) If an application in respect of the arbitration has been made under rule 3(1) the award shall be filed in the same cause; otherwise the award shall be given its own serial number in the civil register”.**

10. While this Court agrees with the Respondent that the present Application need not have been filed in Misc. No. 1 of 2015 which was in respect to an Application under Section 7 of Arbitration Act for Interim Measures of Protection, the Court is of the view that the present Application should have been filed in the same High Court Station. It seems rather untidy for the matter on Protection and Reference to be filed in one High Court Station and Application in respect to other matters to be filed elsewhere. In addition, unexplained change of forum or place could attract speculation of forum shopping. Quite unnecessary. As perception counts for something in the Administration of Justice anything that may lead to negative perception must be avoided.

11. And I must say that the Respondent which is a creature of the devolved system of Government should be at the forefront in insisting that matters such as this be filed in the High Court at the County or nearest to the County.

12. This Court has no hesitation agreeing with the Claimant that this matter be transferred to the High Court at Naivasha for hearing and disposal. That is the Order of this Court. No Order on costs.

**Dated, Signed and Delivered in Court at Nairobi this 24<sup>th</sup> day of November, 2016.**

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

Omwanza for Claimant

Otieno for Applicant

Alex - Court clerk