



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**CIVIL CASE NO. 5 OF 2016**

**BRENDA NGII MUIU .....PLAINTIFF**

**VERSUS**

**PETER MWANGI KIMANI T/A ELECTRO**

**BROTHERS & GENERAL CONTRACTORS .....1<sup>ST</sup> DEFENDANT**

**AMACO AFRICA MERCHANT ASSURANCE CO. LTD .....2<sup>ND</sup> DEFENDANT**

**RULING OF THE COURT**

1. The Notice of Motion application before the court is dated **3<sup>rd</sup> October, 2016**. The application is filed by the plaintiff pursuant to the provisions of **Article 159 2(b) & (e)** and **165 3(a)** of the **Constitution, Section 1A, 3A** and **63 (e)** of the **Civil Procedure Rules, Order 51 Rule 1** of the **Civil Procedure Rules**, and all other enabling Provisions of Law.

2. The application seeks the following orders;

*a. That the application be certified as urgent and that the same be heard ex-parte in the first instance.*

*b. An order of the court that the suit herein be heard by the Court in exercise its original unlimited civil jurisdiction; or in the alternative;*

*c. The court does appoint any of these Arbitrators who are Quantity Surveyors, as had been prayed for in the Notice of Motion dated **20<sup>th</sup> June, 2016** namely;*

*i. QS Kishore Bobby*

*ii. QS Kairu Bachia*

*d. That the costs of this application be costs in the cause.*

3. The application is premised on the grounds set out therein and is supported by affidavit of the plaintiff sworn on **3<sup>rd</sup> October, 2016**.

4. The application is not opposed. Grounds of Opposition were filed on **24<sup>th</sup> October, 2016** out of time, and there was no application to admit the same out of time. The respondent's counsel **Mr. Olonde**, while submitting against the application, did not seek the leave of the court to admit the Grounds of Opposition

out of time. This, despite the fact being brought to his attention by **M/S Mbulu** counsel for the applicant, who refused to accept service of the Grounds of Opposition in court. I therefore strike out the Grounds of Opposition filed herein on **24<sup>th</sup> October, 2016**.

5. This application follows the ruling of this court delivered on **28<sup>th</sup> July, 2016** in which the court directed the Chairman/Secretary of the Chartered Institute of Arbitrators to appoint a Quantity Surveyor as an arbitrator herein within fourteen (14) days.

6. For reasons explained in the application and in the Supporting Affidavit, that direction has not been observed, and to date an arbitrator is yet to be appointed. It is therefore in order and within the rights of the applicant to ask this court to appoint an arbitrator. This court is mandated under **Article 165(3) (a)** and **159 2(b)** and **2(e)** to assist the parties to settle their disputes within reasonable time. In any event the application before the court is meant to effect the orders of this court of **28<sup>th</sup> July, 2016**. There being no substantive response or denial of this application, and the same being merited in the opinion of this court, the Notice of Motion application under reference is allowed with orders that;

- a. Mr. Kishore Bobby, QS, is hereby appointed by this court as arbitrator herein.*
- b. The arbitrator shall within seven (7) days inform the court if he shall take the appointment.*
- c. In the event that Mr. Kishore Bobby for whatever reasons declines the appointment, Mr. Kairu Bachia QS, shall stand appointment as arbitrator herein and the applicant shall notify the arbitrator accordingly.*
- d. Costs shall be in the cause.*

Orders accordingly.

**DATED AND DELIVERED AT MACHAKOS THIS 16<sup>TH</sup> DAY OF NOVEMBER, 2016.**

.....

**E. OGOLA**

**JUDGE**

**In the presence of:**

Mr. Mukule holding brief for Koki Mbulu for applicant

Mr. Jaoko holding brief for Odero Olonde for respondent

Court Assistant – Mr. Munyao