REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 200 OF 2007

MOHAMED SALIM SHAMSUDIN::PLAINTIFF

VERSUS

TRISHCON CONSTRUCTION LIMITED:::::::::::::::::;::::::::::::::::::::DEFENDANT

R U L I N G

INTRODUCTION

1. The application before the court is a Chamber Summons dated 12th June 2009 and field in court on 15th June 2009 by the Plaintiff under the provisions of Sections 36 of the Arbitration Act, Rules 3 (2), 4 and 6 of the Arbitration Rules 1997. The Applicant seeks the following orders:-

(i) Leave be granted to the Plaintiff/Applicant herein to enforce the Arbitration Award dated the 26th May 2009.

(ii) The costs of this application be provided for.

2. The application is premised on the grounds that:-

(i) That the parties were by an order of this honorable court ordered to proceed to arbitrator.

(ii) The arbitration process has come to an end, and an award duly issued.

(iii) The said award has duly been filed in court, and the respective parties duly notified.

(iv) There is no application pending in this case under the provision of Section 35 of the Arbitration Act 1995.

(v) All the matters set out in the annexed affidavit of Mohammed Salim Shamsudin,

and is supported by affidavit of the Applicant **Mohamed Salim Shamsudin** and the Applicants submissions filed in court on 19th March 2013.

3. The application is opposed by the Respondent who filed the following documents:-

i. ***Replying affidavit filed in court on 5th March 2013.***
ii. ***Preliminary Objection filed on 18th January 2013.***
iii. ***Grounds of Opposition filed on 25th February 2013.***
iv. ***Supplementary affidavit filed on 10th July 2014.***
v. ***Submissions filed in court on 6th April 2013.***
vi. ***Supplementary submissions filed in court on 14th July 2014.***

4. The brief history to the application appears to be as follows. The Plaintiff filed suit, seeking interim protective measures pending arbitration. The substantive prayer in the suit was for the dispute to be referred to arbitration. The suit was premised upon a construction agreement entered into between the Plaintiff herein and Dhanji Velji, the 2nd Respondent herein (Reference is made to exhibit MSS-2, at pg 4, to the Original application dated 16th April 2007). A consent was then entered into between the parties in the following terms:-
   i. ***That the contract Agreement dated 2nd June 2006 in regards to 32 Luxurious Apartments on L.R. No. 330/274 between the Plaintiff and the Defendant herein be and is hereby terminated;***
   ii. ***That the Defendant hand over keys, site office, architectural and structural drawing and all other receipts and any other document relating to the construction site on L.R. No. 330/274 to the Plaintiff hereof and vacates the construction site forthwith;***
   iii. ***That a joint inspection and valuation of the project premises, materials, equipment on site be conducted by two qualified quantity Surveyors appointed by Mr. Dhanji of Trishcon Construction Company Limited and Mr. Mohamed Salim Shamsudin to determine the true and correct amount being claimed by Mr. Dhanji from Mohamed Salim Shamsudin within the next fourteen (14) days from the date of filing this consent;***
   iv. ***In the event of any dispute between Mr. Dhanji and Mr. Mohamed Salim Shamsudin on the inspection and valuation report the said dispute be solved by arbitration with the arbitrator being appointed by the Advocates for both parties failure to which the arbitrator shall be nominated by the Chairman of the Association of Architects of Kenya.***

   The Parties filed their respective claims and responses before the arbitrator. At the commencement of the hearing of the said arbitration, the 2nd Respondent raised a preliminary objection saying that they should be struck out as a party to the said arbitration, which objection was duly dismissed.

5. Being dissatisfied with the arbitrator's aforesaid decision, the 2nd respondent filed an application to the **High Court, to wit Misc. App. No.598 of 2008 Dhanji Velji vs Mohamed Salim Shamsudin**, which application was likewise duly dismissed. In the meantime the arbitration proceeded, where all the parties including the 2nd Respondent herein had filed their respective pleadings, framed the issued for determination, led their evidence, where the 2nd Respondent himself was the key witness, and filed extensive submissions in support of the respective claims and defences. An award was then given on or about the 26th day of May 2009. Upon receipt of the said award, the Plaintiff herein duly filed the said award in court as required by the arbitration rules. Upon the said award being given, the Respondents filed applications on the 26th June 2009 under the provisions of Section 35 of the Arbitration Act seeking to set aside the said arbitral award. Both applications were duly dismissed by this court on the 31st July 2012.
6. The Claimant now seeks the recognition and adoption of the said award as binding citing Sections 36 and 37 of the Arbitration Act on recognition and enforcement of awards and grounds for refusal of recognition and enforcement.
7. The Respondent has opposed the application on the grounds, among them that there was no agreement between Mohamed Salim Shamsudin and Dhanji Velji to submit to arbitration, and that the Applicant has instead furnished a Ruling dated 20th February 2008 in HCCC No. 200 of 2007 which is a case between the Plaintiff and the Defendant in this matter. The Defendant submitted that the order that was made by Justice Luka Kimaru dated 20th February 2006 was specific and ordered that:-

"The chairman of the Association of Architects of Kenya be and is hereby ordered to arbitrate on the dispute between the Plaintiff and the Defendant within fourteen (14) days of the said chairman being served with this order."

8. The Defendant submitted that the Plaintiff was Mohammed Salim Shamsudin and the Defendant Trishon Construction Company Limited. There was no order for an arbitration to be undertaken between Mohamed Salim Shamsudin on the one hand, and Trishon Construction and Dhanji Velji on the other. It was submitted that Dhanji Velji is not a party to any arbitration agreement with the Plaintiff. To support this issue the Defendants cited the case of **Agricultural Finance Corporation – Vs – Langata Limited and Jack Mwangitraiign as Jory Traders [1982 – 98] 1 KAR** 772 on privity of contract.

9. The Defendant also submitted that the arbitration in this matter was pursuant to an order of the court under the provisions of order XLV of the Civil Procedure Rules and that being so, the Award herein is a nullity and therefore unforeseeable principally on the basis that it was finalized and the award made outside the time provided for in the court order. The Applicant cited the cases of **Njengah – Vs – Nyakwara KLR 712 and Mairi – Vs – Nyonyoro "B" & Another [1986] 488**. It is the Applicant's position that the Arbitration Act 1995 is applicable. The Respondent submitted that should the court find that the Arbitration Act is applicable, then the Respondents' raise the following issues in terms of section 37 of the Arbitration Act 1995 in submitting that the Award as made is unenforceable:

- ***In terms of Section 37(1)(a)(iv), that the arbitral award deals with a dispute not contemplated by or not falling within the terms of the reference to arbitration.***
- ***In terms of section 37(1)(a)(v), that the arbitral procedure was not in accordance with the law of the state where the arbitration took place.***
- ***In terms of section 37(1)(b), that the recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya.***

10. In regard to the first issue above, that the Tribunal deal with disputes not falling within the terms of reference to arbitration, the Respondents submitted that what constituted the terms of the reference in this case were couched in terms of the consent order filed by the parities in court, and that the "dispute" referred to in the order of Justice Kimaru was in line with what the parties had agreed to in the consent order. The Respondent submitted further that the consent order as adopted by the court on 25th April 2007 was very clear on what was to go to arbitration. Order number 3 read,

    "That a joint inspection and valuation of the project premises, materials, equipment on site be conducted by two qualified Quantity Surveyors appointed by Mr. Dhanji of Trishcon Construction Company Limited and Mr. Mohamed Salim Shamsudin to determine the true and correct amount being claimed by Mr. Dhanji from Mr. Mohammed Salim Shamsudin within next Fourteen (14) DAYS from the date of filing this consent. 4. That in the event of any dispute between Mr. Dhanji and Mr. Mohammed Salim Shamsudin on the inspection and valuation report the said dispute be solved by arbitration with the arbitrator being appointed through by the Advocates for both parties herein failure to which the arbitrator shall be appointed by the Chairman of the Association of Architects of Kenya."

    Then the relevant part of the order by Justice Kimaru reads,

    "That the Chairman of the Association of Architects of Kenya be and is hereby ordered to appoint an arbitrator to arbitrate on the dipute between the Plaintiff and Defendant within fourteen (14) days of the said Chairman being served with this order. 2. THAT in determining the dispute, the arbitrator shall be at liberty to appoint an independent quantity surveyor to conduct the valuation of the works undertaken by the Defendant."

11. It is the Respondent's submission that the Arbitrator was to only determine what was put before

him to determine in line with the consent order. Instead of keeping within the ambit of the court direction, the Arbitrator went on a frolic of his own to entertain issues not within the scope of the reference as defined by the consent and court orders, and allowed the Claimant to file a fresh claim outside the scope of that filed in HCCC 200 of 2007 to introduce new claims by the Claimant based on an alleged breach of contract by the Respondents; determination of whether the alleged termination of the contract by the Claimant was lawful or otherwise and then proceeded to assess and award damages against the Respondents. In contravention of the court orders, which was between the Plaintiff and the Defendant, the Arbitrator went ahead to enjoin the 2nd Respondent, a director of the 1st Respondent, as a party to the arbitral proceedings. Citing the authority of **Mahican Investments Limited & Ors and Giovanni Gaida & 79 Others, High Court Misc Civ Appl 792 of 2004 , (Authority No. 4)**, the Respondent urged that this court has the jurisdiction to consider whether indeed the Arbitrator exceeded his scope and if so, to declare the award unenforceable.

12. In response the Applicant through his counsel Mr. Wandabwa submitted that the ground that the 2nd Respondent was merely a director of the Defendant, and so the Award should not be enforced against him is not one of the grounds set out in S. 37 of the Arbitration Act. In any event this ground was ventilated before the High Court, and dismissed by the Ruling of Justice Muga Apondi of the 31st July 2012, and to re-ventilate it would be an abuse of process. The Applicant submitted that the basis the learned judge held as he did, and correctly so, is that the Subject agreement, the genesis of this suit was entered into between "*Mr. Mohamed Salim Shamsudin of Post Office Box No. 10540 Nairobi Kenya (herein after referred to as the client) on the one part and Mr. Dhanji of I.D. No. 21609477 of Trishcon Constuction Company Ltd. P.O. Box 39588-00623 Nairobi Kenya (herein after called the main Contractor) of the other part*."

    From the material placed before the arbitrator, the correspondence relating to the said contract was largely between the Plaintiff and Mr. Dhanji Velji, and the bulk of the payments made were to Mr. Dhanji personally. It was submitted that Clause C of the consent order appearing on record explicitly states as follows:-

    > ***"That a joint inspection and valuation of the project premises, materials, equipment on site be conducted by two qualified quantity surveyors appointed by Mr. Dhanji of Trishcon Construction Company Ltd and Mr. Mohamed Salim Shamsudin to determine the true and correct amount being claimed by Mr. Dhanji from Mr. Mohamed Salim Shamsudin within the next fourteen days from the date of the filing of this consent."***

13. The consent Order goes further and at clause (e) thereof states as follows:-

    > ***"That in the event of any dispute between Mr. Dhanji and Mr. Mohamed Salim Shamsudin on the inspection and valuation report, the said dispute be solved by arbitration with the arbitrator being appointed through by the advocates for both parties herein failure to which the arbitrator shall be nominated by the Chairman of the Association of Architects of Kenya."***

14. The Applicant submitted that Dhanji was a principal party to the subject construction agreement and that the resulting Court Order referring the matters to arbitration expressly makes him a party to the consequent arbitration. Indeed Dhanji is the principal instructing party on behalf of Trishcon Company Ltd.
15. The Applicant further submitted that an application to the arbitrator to enjoin Mr. Dhanji to the proceedings was made, which application was allowed by the arbitrator, as he is empowered to do by virtue of S. 24(3). Thereafter at the commencement of the arbitration, the Respondents raised a preliminary objection objecting to the joining of Mr. Dhanji as a party, which Objection was overruled by the arbitrator on the 9th July 2008. The Applicant cited Section 17(6) of the Arbitration Act provides as follows:-

    > ***"Where the Arbitral Tribunal rules a preliminary question that it has jurisdiction, any party aggrieved by such ruling may apply to the high Court within thirty days of having***

received notice of that ruling to decide the matter."

16. After the ruling aforesaid on the preliminary point as to whether the Arbitrator could enjoin Mr. Dhanji to the arbitral proceedings, the Applicants filed an application, to wit **Miscellaneous Application No. 598 of 2008 Dhanji Velji vs. Mohamed Salim**, which Application was dismissed. It is noteworthy that no Appeal has ever been preferred from the said ruling. Accordingly, it was submitted, this Court cannot in an application to adopt the arbitration award deal with the Applicants dissatisfaction with the Arbitrator's preliminary award regarding the joining of Mr Dhanji Velji to the proceedings.
17. I have carefully considered this ground of objection. In my view, the submission by the Applicant are correct. To allow this ground outside the thirty (30) day period as statutorily required by Section 17(6) of Arbitration Act, would be unlawful and unjust. Secondly Mr. Dhanji having participated in the proceedings, defended his case and led his evidence in the matter cannot at the adoption stage be heard to say he was wrongly joined as party. Finally, this issue was dismissed by this court. I have no further jurisdiction over the issue.
18. On the issue that the arbitral procedure was not in accordance with the law of the state where the arbitration took place, the Respondent submitted that the court order allowed for 45 days within which the Arbitrator was to conclude the proceedings and file his award, subject to extension. The period was extended for 120 days. The procedure then according to extended period was that the proceedings had to be finalized within the extended period. This was not done. The court order was actually the law guiding the arbitral proceedings on procedure as to when the process should be completed. This was not observed. The award was accordingly made contrary to the set procedure and therefore, unenforceable.
19. In response the Applicants submitted that it is not in dispute that the Judge's order required the arbitrator to file his award within 45 days, which date was long past, by the time of the award, though as the record will show, this order was extended variously. However the Applicant submitted that this is not one of the material considerations under the provisions of S. 37 of the Arbitration Act. He further submitted that this issue was raised and squarely dealt with by this court in the ruling of the 31st July 2012, and is now res judicata. However, for record purposes the Applicant submitted that the Respondents had written to the applicants seeking consensus on extending time but they refused to consent, but that they nonetheless proceeded with the arbitration for well over six (6) months after the lapse of the period, led their evidence, made submissions, and even filed an application to court dated the 8th December 2008 seeking interim orders of protection pending the arbitration. Again, well after the time within which the set arbitration period had lapsed, this court observed that "there were arbitration proceedings going on between the parties" and proceeded to give orders of injunction "pending the determination of the arbitration" this is set out in the ruling dated the 10th March 2009 to the Respondent's application dated 8th December 2008.
20. The Applicant submitted that a party cannot obtain an advantage from the Court on the basis of an ongoing process (the arbitration), and then when they lose, turn around, and disown the same very process, when seeking another advantage from the same court. The Applicants cannot approbate by participating an all drawn out process before a tribunal to its logical end, and then when they lose, turn around and reprobate by saying the process took more than the required forty five (45) days. Further, in one breath they pray that the award is flawed on the basis of arbitration having been conducted over and above the stipulated period, yet they in the same breath wish to have the said award only "partially set aside" and part of the award against them "severed".

21. I have considered this issue carefully. Order 45 Rule of the Civil Procedure Rules provides that the arbitral award must be made and filed in court within the stipulated period, which position is confirmed by the case of **Nyangua vs. Nyakwara (1986) KLR pg. 172**. If the subject arbitration had been referred to Arbitration under the provisions of Order 45, and the award filed under the provisions of Order 45, then the arbitrator was by law obliged to file the award within the stipulated period, subject of course to the extension the court may give. However, the subject arbitration was not made under the provisions of Order 45 of the Civil Procedure rules, and the same was referred to arbitration by the agreement of the parties, in a consent order, and the Court in the exercise of its jurisdiction under the provisions of the S. 6 of the Arbitration Act 1995.

What gives the arbitration jurisdiction is the agreement between the parties. The fact that the said agreement is made before the court, and contained in a consent order does not make it less of an agreement, nor does it give the court more latitude as envisaged by Order 45. This distinction in the processes by which matters are referred to arbitration was appreciated by the Court of Appeal in the case of **Kenya Shell Limited vs. Kobil Petroleum Limited (2006) e KLR at pg. 8** where it was stated that:-

> ***"Arbitration is one of the several disputes resolution methods that parties may choose outside the courts of this country. The parties may either opt for it in the course of litigation under Order XLV of the Civil Procedure Rules or provide for it in contractual obligations in which event the Arbitration Act, No. 4 of 1995 (the "Act") would apply and the Courts take a back seat."***

Arbitral proceedings commenced under the Arbitration Act are governed strictly by the provisions of the said Act. Section 33 the Arbitration Act of 1995 provides the instances under which the arbitral tribunal may terminate proceedings, and lapse of the time set by the court is not one of them. It is purported that to the extent that the proceedings went on for a period in excess of that stipulated by the Court Order, then this goes to jurisdiction. However, Section 17(3) of the Arbitration Act provides as follows "***A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be outside the scope of its authority is raised during the arbitral proceedings***." If it would be legally tenable that the jurisdiction of the arbitrator ceases once the time limit set for the exercise expires, then the Respondents herein ought to have raised the said issue before the arbitrator at that point of expiry and to do so now is belated and untenable. Indeed Section 5 of the Arbitration Act provides as follows:-

> ***"A party who allows any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is prescribed, within such period of time, shall be deemed to have waived the right to object."***

It is my finding that it is too late in the day to raise this kind of objection.

22. On the third issue, the Respondent submitted that the recognition or enforcement of the arbitral award would be contrary to the public policy of Kenya. In this regard, it was submitted that the Arbitrator failed to appreciate the effect of the mutual rescission of the Contract between the parties. He failed to appreciate the proper law to apply to the circumstances of the case. The parties while submitting to the arbitration had in mind that the applicable law would be that taking into consideration that there was a mutual rescission of the contract between them, and that save for the valuation of works done by the Respondent, each party had abandoned its claims. Having failed to appreciate that position, the Arbitrator applied different legal principles which led him to award huge sums of money in damages against the Respondent. the Respondent cited the case of **Tanzania National Roads Agency v Kundan Singh Construction Ltd Misc Civ Appl 171 of 2012 [2013] eKLR, (Authority No. 7)** where the court considered the issue of an arbitral tribunal applying the wrong law under the ambit of Section 37 of the Arbitration Act. The court found that the Arbitral Tribunal in that case had applied the wrong law and declined to allow the application for enforcement. The court considered the issue in the context of failure by the tribunal to apply the law agreed to by the parties and also in the context of public policy. The Respondent is now faced with a huge claim founded on application of the wrong principles of law. The expected result by the parties on submission to arbitration was for the Arbitrator to establish whether the Respondent was owed any money by the Claimant for work done. Having proceeded on the wrong basis in law, it was submitted, the Award has put the Respondent in a predicament in that he has to defend himself against an unwarranted claim based on application of manifestly wrong legal principles. It would be an injustice if the Award was allowed to be enforced. The fair sense of justice and equity, which are part and parcel of public policy dictate against such an award being enforced.

In response the Applicants submitted that this is not a material consideration in such an application. It any event it is inconceivable that a developer of 32 apartments is impecunious. No material is placed before the court to suggest that he holds such properties as trustee. With regard to the second basis set out in S. 35(2)(b)(2) regarding public policy, The Court of Appeal has set out the public policy relating to arbitration matters in the case **Kenya Shell Limited vs Kobil Petroleum Limited (2006) e KLR at pg 9** to be as follows:-

> ***"We think, as a matter of public policy, it is in the public that there should be an end to litigation and the arbitration Act under which the proceedings in this matter were conducted underscores that policy."***

In the case of **Kihuni vs Gakunga (1986) KLR** the Court held that at pg. 576 that:-

> ***"The Parties cannot be heard to challenge issues referred to arbitration especially in a case such as this where the parties and their respective Advocates drew the issues. The parties are deemed to know the real questions between them. The arbitrators will consider evidence on the issues which are referred to them"***

23. I have also observed that the Respondent's former counsel also rather very carelessly submitted that the award was obtained by corruption contrary to public policy and accused the judge who had dismissed their application for rejection of award of gross incompetence and suggested that the Judge was influenced to reject their application. I found that submission to be uncalled for. A judge is not a punch bag to be boxed by every looser who wishes to vent his anger. Allegations about misprorpriety, undue influence or incompetence are grave grounds upon which a judge would be required to leave office. Carelessly alleging the same simply because a party has lost a matter is an abuse of the office of a counsel. I have noted, however, that the counsel who made those allegations against the judge has ceased acting for the Respondent, and that the present counsel has not emphasize that point in their submissions.
24. On the issue that the award was secretly delivered to the Plaintiff, the Respondent alleges that it was wrong for the arbitrator to receive his fees from the Claimant and to release the award to the Claimant. The Claimant submitted that this was done in keeping with the law, and is not one of the grounds set out in Section 37 of the Arbitration Act. This issue was ventilated extensively by the Applicants in their applications to set aside the arbitration award. The Claimant submitted that the arbitration was by consent of the parties commenced under the provisions of the Arbitration Act 1995. A glance at the correspondence appearing in the Respondents bundle at pgs. 1- 22 of the Arbitrators Directions and Orders appearing in the bundle attached to the Respondents replying affidavit reveal that:-

a. The sole arbitrator was to give his award on the 29th February 2009.
b. Thereafter on the 9th of February 2009 the arbitrator indicated he would give further directions.
c. At pg. 20 of the respondents bundle, the Arbitrator on the 14th of April indicated that "parties would be notified once the award is ready".
d. On the 28th day of April 2009 the Arbitrator indicated that the award was ready for collection on the 6th of May 2009, subject to the payment of his fees.
e. It is noteworthy at this point that the rate of the arbitrators' fees had earlier been agreed upon, with both parties sharing the said fees.
f. On the 5th of May 2009, he wrote and informed the parties that the subject award would not be ready for collection, but would be ready on the 13th May 2009.
g. It appears as if the Applicant, Trishcon Ltd tendered to the Arbitrator a post dated cheque for their fees, by reason of which the arbitrator deferred the parties from collecting the award.
h. The Applicant duly paid his share of the arbitrators' fees. Ref pg. 11 and 12 of the Respondents bundle, which was as per a fee note issued by the arbitrator.
i. On pg. 13 of the Applicant's bundle, the Arbitrator indicated that he would retain the award pending the payment of the costs by either party.
j. The Applicant then subsequently paid the full fees due to the arbitrator and collected the arbitral award. Ref pg. 8 and 9.

k. This was duly advised by the arbitrator. Ref pg. 5 of the Applicant's bundle.
l. To date the Respondent's have not refunded the Applicants their part of the fees paid by the Applicant on their behalf to collect the said award.

25. It is submitted by the Respondents that to the extent that the Arbitrator received his fees from the Applicant, then this amounts to misconduct on his part. This submission is not the archaic position of law, which has been relooked at by the changing times. Ref Russell on Arbitration 21st Edition Sweet and Maxwell 1997 Edition at pg. 140, which states as follows; "The Traditional method by which arbitral tribunals have secured payment has been to with hold the award from the party or parties seeking to take it up until any outstanding fees have been paid, effectively to exercise a lien over the award. This is now sanctioned by statute in a provision that the parties cannot exclude. When the award is ready for delivery the tribunal notifies the parties that it is available on the payment of its fees. Either party or both may then take up the award, on the payment of its fees. It does not concern the tribunal which party pays the fees. Where the party who takes up the award is not, under its terms, liable to pay the fees, he may recover from his opponent all the costs the award imposes, including the tribunals fees.

26. This practice has found favour in our Kenyan Chapter of Chattered Arbitrators, whose 1998 Rule provide, at Rule 10 (3) thereof provides as follows "***Any party may take up the award upon payment of any costs of the award that are still outstanding***". It is noteworthy that there was no agreement between the parties as to the choice of the arbitral procedure as contemplated by S. 20 (1) of the Arbitration Act. Accordingly the Arbitrator was free, as he did to use the Chartered Institute of Arbitrators, Arbitration Rules of 1998, as contemplated by S. 20 (2) of the Arbitration Act 1995, which provides as follows "***Failing an agreement under subsection (1) the arbitral tribunal may, subject to this act conduct the arbitration in the manner it considers appropriate***."

27. In the upshot, and pursuant to the foregoing findings of this court, this court is satisfied that the application is merited.

28. The application is allowed with costs to the Applicant.

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI THIS 1TH DAY OF MAY 2015

E. K. O. OGOLA

JUDGE

PRESENT:

Mr. Ogada holding brief for Wandabwa for the Plaintiff

Mr. Mwaniki holding brief for Namachanja for the Defendants

Teresia – Court Clerk