



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL CASE NO. 116 OF 2014 (O.S)

TROPICAL FARM MANAGEMENT (KENYA) LTD. ::::::::::::::: APPLICANT

-VERSUS-

GICIARO ESTATES LIMITED ::::::::::::::: 1ST RESPONDENT

PROTASIO NJERU ::::::::::::::: 2ND RESPONDENT

RULING

1. The application before the court is an **Originating Summons** dated **24th March 2014**. The application is filed under Section 12 of the Arbitration Act, Rule 3 (1) of the Arbitration Rules, Order 37 Rule 14 of the Civil Procedure Rules, Sections 1A, 1B and 3A of the Civil Procedure Act.
2. The application seeks the following orders namely:-
 1. *That the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch) Nairobi do appoint a fit and proper person to act as an arbitrator under the provisions of The Arbitration Act in a dispute between the parties hereto arising from a Management Agreement dated 5th December 2006 made between the Applicant and the 1st Respondent.*
 2. *That in the alternative, this Honourable Court do appoint a fit and proper person to act as an arbitrator under the provisions of the said Act in the said dispute between the parties hereto, and*
 3. *That the costs of this application be provided for.*
3. The application is premised on the several grounds set out therein and is supported by **affidavit of JEREMY HULME** dated **20th March 2014**.
4. The application is not opposed. It was served upon the 1st Respondent who has never entered appearance in this matter, while the suit against the 2nd Respondent was withdrawn.
5. Mr. JEREMY HULME in his supporting affidavit has given the background on the application. By an Agreement dated 5th December 2006 between the Applicant and the 1st Respondent, the 1st Respondent appointed the Applicant its agent to manage and operate a tea farm which the 1st Respondent then owned at a remuneration and subject to such terms and conditions as are stated therein for a period of five years from 1st day of July 2006.
6. Clause 13 of the Management Agreement provided that all disputes arising from the said Agreement shall be referred to the decision of a single Arbitrator to be appointed in accordance with the provisions of the Arbitration Act. However it did not provide for the procedure for

appointing an Arbitrator in the event of the parties not agreeing as to who should arbitrate. A copy of the said Agreement is annexed to the affidavit of Mr. Jeremy Hulme as exhibit “**JH-1**”.

7. The agreement took effect and parties assumed their responsibilities in due course. However, there is now a dispute and the parties are unable to agree or have disagreement on the modalities of appointing an Arbitrator and hence this application.
8. The application seems to me to be well founded. As it is not opposed, I allow it in the following terms:-
 - a. *That the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch), Nairobi do appoint a fit and proper person to act as an Arbitrator under the provisions of the Arbitration Act in the dispute between the parties hereto arising from a management agreement dated 5th December 2006 made between the Applicant and the 1st Respondent.*
 - b. *That the above appointment shall be carried out by the said Chairman within a period of three (3) days upon this order being served upon the said Chairman of the chartered Institute of Arbitrations (Kenya Branch) Nairobi.*
 - c. *That costs shall be in the cause.*

Orders accordingly.

DATED, READ AND DELIVERED AT NAIROBI

THIS 31ST DAY OF JULY 2014

E. K. O. OGOLA

JUDGE

PRESENT:

Mrs. Gikonyo for Applicant

No appearance for Respondents

Teresia – Court Clerk