



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**ELC. MISC. 2 OF 2011**

**KENLAYSIA TRADING LTD.....APPLICANT**

**V E R S U S**

**KENYA TOURIST DEVELOPMENT  
CORPORATION.....RESPONDENT**

***(In the matter of an Intended Arbitration between Kenlaysia Trading Ltd and Kenya Tourist  
Development Corporation)***

**R U L I N G**

Annexure “CGM3” has clause 8 which indicates that all questions in dispute between the parties in the Agreement be referred to arbitration. Paragraph 16 of the supporting affidavit states that the Plaintiff never entered into the Agreement, and that, in any case, the Agreement entered into between the parties was not registered. The Defendant is blamed for that non-registration. In paragraph 17 of the affidavit it is deponed as follows:-

*“17. THAT the failure of the Respondent to present the lease for registration within the stated period rendered the Applicant a protected tenant under the Landlord & Tenant (Shops, Hotels and Catering Establishments) Act.”*

The present application is made under section 7 of the Arbitration Act and Rule 2 and 11 of the Arbitration Rules 1997 for an injunction to restrain the Defendant by itself, its servants or employees from interfering with or in any way dealing with the suit property or the Plaintiff’s occupation and possession of the premises to allow for the dispute arising out of the Lease Agreement (“CGM 3”) to be referred to an arbitrator for hearing and determination.

Once the Plaintiff has denied that it signed the said Agreement it cannot rely on the arbitration clause in the same. There would therefore be no basis for the granting of any preservative orders under section 7 of the Arbitration Act.

I dismiss the application.

**DATED AND DELIVERED AT NAIROBI THIS 24<sup>TH</sup> DAY OF FEBRUARY 2011**

**A. O. MUCHELULE**

**J U D G E**

