



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 536 of 2006**

NOKIA CORPORATION.....PLAINTIFF

VERSUS

MUSIMBA INVESTMENTS LIMITED.....DEFENDANT

**RULING**

Application dated 7<sup>th</sup> January 2009 brought under Section 6 of Arbitration Act Section 59 Civil Procedure Act and Order 45 rule 1 Civil Procedure Code.

The Applicant seeks order to stay the proceedings herein and refer the parties to arbitration in accordance with the agreement entered into by parties.

The application is predicated upon an supply agreement entered into by parties on 21<sup>st</sup> January 2006. The said agreement contains an agreement that the parties would submit any dispute to arbitration. The Plaintiff's claim is for USD 3,755,686.51 with interest. The Defendant denies owing that claim. The application is supported by affidavit of Patrick Musimba Managing Director of the Defendant Company. The material placed before the court are the (1) Supply agreement with two affidavits. It is appendix 2 "**Nokia terms and conditions of sale for Middle East & Africa sales area.**" Clause 18 of which it is provided "**the applicable law and Dispute Resolutions**".

All disputes arising out of or in connection with these terms shall be finally settled under the Rules of Arbitration of International Chamber of Commerce by arbitrator appointed in accordance with the said rules in Helsinki Finland in the English Language and enforceable in any court of competent jurisdiction.

Furthermore nothing prevents the Plaintiff applying to the court of any country for injunctive or other equitable relief to prevent or curtail any breach of these terms or enforcing any arbitral award. The Plaintiff has the right to proceed any disputes (also debt collection) in the courts of the agreed Territory or of other local court. The advocates have filed authorities. The Applicant has relied on Arbitration Act 1995 of Kenya and the case of Charron Kenya Ltd vs Tamoil Kenya Limited [2007] e KLR.

The facts of that case were quite different. There was a dispute on the existence of an arbitration agreement between the parties in the present case the agreement is quite clear. The Defendant agreed that the Plaintiff may proceed and present disputes, including debt collection within the territories of the operations. It is clear therefore that the agreement empowered the Plaintiff under the said agreement clause 18 to proceed in any dispute including debt collection in the Territory covered under the agreement. The Defendant has filed a list of authorities including Civil Procedure Act Cap 21 Laws of Kenya and Civil Procedure Rules.

The case of Kisumuwalla Oil Industries Ltd vs. Pan Acratic Commodities PTE Ltd and Another 153 [1995 – 1998] IEA was cited by the Defendant. The authority raised several legal issues including the Scott V. Avery clause, common law jurisdiction and Section 6 Arbitration Act and Judicature Act Section 3(1). The issues involved quite different. The Court of Appeal said that the Arbitration Act made no classification of arbitration clauses. This is not an issue here.

The other authority relied upon is

Leslie and Anderson (coffee) Ltd vs Homa Ginners Ltd. This authority deals with service out of jurisdiction (Kenya to Uganda). On close examination of clause 18 in the relevant agreement it is clearly stated that “**should Plaintiff (Nokia) use this right the Buyer agrees not to contest the jurisdiction of the court or seek to raise any counterclaim or set off in another forum.**”

The Defendant has not disputed the validity of the agreement. In conclusion I find no merit in this application and the same is dismissed with costs to the Plaintiff.

Dated and delivered at Nairobi this 8th day of June 2010.

**J. N. KHAMINWA**

**JUDGE**