



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI

COMMERCIAL & TAX DIVISION – MILIMANI

MISC. APPLICATION NO. 859 OF 2010

NECTEL (K) LIMITED

..... **PLAINTIFF**

VERSUS

**EASTERN & SOUTHERN AFRICAN TRADE &
DEVELOPMENT BANK (PTA BANK)**

..... **DEFENDANT**

R U L I N G

By this application, the Applicant moves the Court to grant an order setting aside an arbitral award. Pending hearing of the application, the Applicant also applied for a stay of execution of the award. A temporary stay was granted when the application first came for hearing under a Certificate of Urgency.

After the hearing of a Preliminary Objection raised against the application, learned Counsel for the Applicant asked for an extension of the temporary stay order pending the delivery of the ruling. However, learned Counsel for the Respondent opposed the extension.

I have considered the stand taken by both Counsel. As indicated above, this application seeks to set aside an arbitral award. The Preliminary Objection raised in respect thereof may succeed or it may not. If it succeeds, there will be no longer any application and the temporary stay will automatically lapse. But if the Preliminary Objection does succeed, then the application will proceed to full hearing. If by the time the Ruling is delivered the execution will have already issued, then it will be pointless to proceed with the application.

In order to preserve the application in the event the Preliminary Objection does not succeed, I think that it is fair and proper that the temporary stay be maintained.

For that reason, I direct that the interim orders granted herein on 21st October, 2010 be and are hereby extended to the date of the Ruling.

It is so ordered.

DATED and DELIVERED at NAIROBI this 23rd day of November, 2010.

L. NJAGI
JUDGE