



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

**Civil Case 311 of 2009**

**THOMAS V. ABEY .....PLAINTIFF**

**VERSUS**

**AISHA MOHAMED RAHMATHULLAH ..... 1<sup>ST</sup> DEFENDANT**

**MUMTAHINA AHMED MAHFUDH JEIZAN ..... 2<sup>ND</sup> DEFENDANT**

**SHAIK MOHAMED RAHMATHULLAH ..... 3<sup>RD</sup> DEFENDANT**

**SATYAM INDUSTRIES KENYA LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**R U L I N G**

Application dated 8/5/09 filed on 11/5/09 seeking stay of proceedings and that this suit be referred to arbitration under **Arbitration Act No.4 of 1995, Section 6 (1)** which empowers the court to stay proceedings and refer the same to arbitration where parties are bound to arbitration agreement provided the arbitration agreement is null and void, inoperative or incapable of being performed or that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration. If an application is made not later than the time when that party enters appearance or files any pleadings or takes any other steps in the proceedings.

It is submitted that the parties being members of a limited liability company, they are bound by **Article 33 of Articles of Association** of the company which provides:

*“Whenever any difference arises between the company on one hand and any the members, their executors, administrators or assigns on the other hand, touching the true intent or construction or the incidents or consequences of these articles or statutes or touching anything then or thereafter done, omitted, executed or suffered in pursuance of these Articles ... or of the statutes or touching any breach or alleged breach of these Articles or any claim on account of such breach or alleged breach or otherwise relating to the premises or to the company, every such difference shall be referred to the decision of arbitration.”*

It is quite clear that the disputes arising in this suit are not such as ARE envisaged in that **Articles of Association**. Here we have a business dispute not one touching true intent or construction... or consequences of these **Articles**. The parties are fighting over business of the company and its assets. It is my finding therefore, that there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration under **Article 33** thereof.

I therefore dismiss this application with costs to respondents.

Orders accordingly.

**DATED** and **DELIVERED** this 12<sup>th</sup> day of May 2009.

**JOYCE N. KHAMINWA**

**JUDGE**