

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

CIVIL SUIT 701 OF 2005 (OS)

PAN AFRICA BUILDERS & CONTRACTORS..... PLAINTIFF/APPLICANT

VERSUS

NATIONAL SOCIAL SECURITY FUND

BOARD OF TRUSTEES.....DEFENDANT/RESPONDENT

R U L I N G

The parties to this suit agreed by consent to refer the matters in dispute for determination by arbitration. Each party was to appoint an arbitrator. The arbitration proceedings were to be conducted before the two arbitrators. The plaintiff and the defendant duly appointed the said arbitrators. However, the arbitrator appointed by the defendant resigned. Three (3) weeks after his resignation, the defendant has not appointed another arbitrator to replace him. The court is being told that the decision making process in the defendant fund has been paralysed on account of the fact that there is currently no substantive managing trustee in office. There is also a dispute involving the capacity of the Board of Trustees to meet, deliberate and make key decisions.

I have considered the facts of this case. It is evident that the plaintiff made a case for intervention by the court in the appointment of the arbitrator supposed to be appointed by the defendant in replacement of the arbitrator who resigned. I will however give an opportunity to the defendant to make the appointment of the new arbitrator before this court's orders come into play. The defendant is directed to appoint a new arbitrator to determine the dispute herein on or before 20th December 2008.

If such appointment shall not be forthcoming, the chairman Chartered Institute of Arbitrators shall be at liberty to appoint an arbitrator on behalf of the defendant in place of Mr. Norman Mururu who tendered his resignation. The costs of this application shall be in the cause.

DATED at NAIROBI this 28th day of NOVEMBER 2008.

L. KIMARU

JUDGE