

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

Civil Case 44 of 2006

MARU PILING & GEOTECHNICAL CONTRACTORS LTD..... PLAINTIFF

VERSUS

ZAKHEM CONSTRUCTION (K) LTD.....DEFENDANT

RULING

Notice of Motion dated 02.04.2008.

Orders sought:

- 1. Orders issued on 26th October 2007 be lifted for purpose of this application.*
- 2. Order to issue to Chartered Institute of Arbitrators (Kenya Charter) do appoint an arbitrator to her and determine the dispute between the parties herein.*

On 27.10.2007 this Court, (Justice Lesiit) stayed these proceedings and referred this dispute to arbitration. The result is that this court no longer has jurisdiction to deal with this matter. However, for purpose of this application, the order is lifted by this application. The Applicant states that the parties have not yet agreed on an arbitrator. The applicant has nominated Prof. Githu Muigai and Respondent Mr. Norman Mururi.

The Applicant is seeking order of the court to order the Chartered Institute of Arbitrators (Kenya Chapter) to appoint an arbitrator. Clause 21.2 requires that disputes shall be settled in accordance with Arbitration Act Laws of Kenya. Therefore, the provisions shall on the appointment of an arbitrator must be complied with.

I have read the Replying Affidavit and Preliminary Objections raised by the Respondent. I have also read the Ruling of this Court referring the dispute to arbitration. It is to be noted that no appeal has been filed against that decision. I have noted that the Respondent is claiming Kshs.1,315,799 /= as a condition to be met before the matter proceeds to arbitration. It is to be noted further that there is considerable delay since the Court Order on 26.10.2007.

This is a domestic arbitration and it would be unduly delayed if the matter was to be dealt with as suggested by the Respondent.

It is my view that the Respondent interest is to delay the matter so as to avoid determination of the dispute. I overrule the Preliminary Objection and Submissions of the Respondent. I allow application and do order that the Institution of Chartered Arbitrator Kenya Chapter do proceed and appoint the arbitrator to hear and determine this dispute within next 30 days from todate.

It is so ordered. Costs to the Applicant.

DATED this 21st day of November, 2008.

JOYCE N. KHAMINWA

JUDGE