

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 5694 of 1993

PIPELINE HYDRAULIC ENGINEERS LTDPLAINTIFF

V E R S U S

1. JOSEPH WAWERU MUIRUR

2. STANDARD CHARTERED BANK LTDDEFENDANTS

R U L I N G

This suit has dragged on since 1993! The contract between the parties contained an arbitration clause. It is Clause 36. On 16th June, 1997 the court (Ole Kuiwua, J, as he then was), ordered as follows while setting aside an *ex parte* judgment against the Defendants:-

“ORDER: Judgment entered *ex parte* is hereby set aside as there was an arbitration clause/provision, and the Defendants must take all steps necessary to go to such arbitration within 30 days of today”

Since that time, more than 11 years ago, the parties have not yet gone to arbitration. They blame each other for failure to do so.

The Plaintiff has applied, by chamber summons dated 22nd November, 2000, for an order that the court be pleased to appoint an arbitrator. The Defendants have opposed the application. Lengthy written submissions have been filed, and a number of cases have been cited.

It is clear to me that the strict provisions of the arbitration clause, regarding appointment of an arbitrator in the event that the parties fail to agree on an arbitrator, have not been exhausted. Before such exhaustion the court would have no jurisdiction to appoint an arbitrator. The contract between the parties in this regard must be given full effect. The best that the court can do is to supervise the process of appointment of an arbitrator as provided for in the arbitration clause so that more time is not wasted by the parties. That is what I propose to do.

The point now reached is that the parties have failed to agree on an arbitrator. In this event the arbitration clause provides:-

“.....or failing agreement within 14 days, a person to be appointed on the request of either party by the Chairman or a Vice-Chairman for the time being of the East African Institute of Architects who will, when appropriate, delegate such appointment to be made by the Chairman of the Local (National) Society of Architects.”

It was the Defendants who sought enforcement of the arbitration clause. Therefore, I hereby direct that the Defendants do, within 14 days of delivery of this ruling, write to the Chairman of the East African Institute of Architects to request appointment of arbitrator. Such letter shall be copied to the Plaintiff and the court. A date for mention of the case shall be given for further orders or directions as may be

necessary.

In the result therefore, the chamber summons dated 22nd November, 2000 is hereby dismissed. In the circumstances of this case, the parties shall bear their own costs of the application.

Those shall be the orders of the court.

DATED AT NAIROBI THIS 2ND DAY OF DECEMBER, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 5TH DAY OF DECEMBER, 2008