

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

Misc Appli 19 of 2006

IN THE MATTER OF THE ARBITRATION ACT 1995

LAWS OF KENYA

AND

IN THE MATTER OF AN ARBITRATION

BETWEEN

TOTAL KENYA LIMITED.....APPLICANT

VERSUS

CHARLES KIVEVO MUASYA.....DEFENDANT

RULING

By this ex parte Chamber Summons expressed to be brought under Section 36 of the Arbitration Act 1995 and Rule 6 of the Arbitration Rules 1997, the Claimant/Applicant seeks orders that leave be granted to enforce as a Decree, the Final Award made on 31st May 2005 by the Arbitration herein Ms Njeri Kariuki. The claimant also asks for the costs of this application. The application is supported by an affidavit sworn by Franklin Juma the Legal Manager of the Claimant Company in which he avers that by an Arbitration Agreement contained in Clause 42 (b) of a Marketing Licence Agreement (**“the agreement”**) the Claimant and the Respondent (the Respondent) agreed to submit to arbitration, inter alia any such disputes as may arise between them under the Policy; that a dispute having arisen the Claimant instituted a suit in court being **HCCC NO. 256 OF 2000**, subsequently pursuant to Clause 42 (b) of the Agreement, the dispute was referred to Arbitration; that Ms Njeri Kariuki was appointed Arbitrator; that upon consideration of the parties respective evidence and submissions the Arbitrator published her Final Award on the 31st May 2000 wherein she awarded the Claimant a sum of Sh.1,561,045.50 being the amount admitted by the Respondent as due and owing to the Claimant and interest at 12.6% per annum which computed interest amounted to a sum of Shs.1,318,563.10; that the total amount due being Sh.2,879,608.50.

Counsel for the Claimant submitted that despite demand being made by the Claimant upon the Respondent to pay the said sum of Shs.2,879,608.60 the Respondent has refused, neglected and/or otherwise failed to pay the said sum of part thereof and that on the 13th January 2006 the said Final Award was filed in court pursuant to the Provisions of Rule 4 (2) of the Arbitration Rules 1995.

I am satisfied that the Claimant has complied with the Provisions of the Arbitration Act of 1995 as per the law required and I do allow this application in terms of Prayer 1 and 2 and 3 of the ex parte chamber Summons dated 4th April 2006.

Dated and delivered at Nairobi this 20th day of July 2006.

J.L.A. OSIEMO

JUDGE