

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Misc Cause 818 of 2004

**IN THE MATTER OF: THE ARBITRATION ACT 1995 LAWS OF
KENYA**

AND

IN THE MATTER OF AN ARBITRATION

BETWEEN

NAROTTAM MULJI KHATAN CLAIMANT

AND

KENYA ORIENT INSURANCE CO. LTD. RESPONDENT

R U L I N G

This is an application under Section 36 of the Arbitration Act 1995 and Rule 9 of the Arbitration Rules 1997 seeking leave of this court to enforce the Arbitral award of Mr. K. K. Pandya filed herein on the 11th November, 2004 as a judgement of the court.

The record shows that the Respondents refused to take part in the appointment of the arbitrator under the provisions of the Arbitration Agreement between the parties forcing the applicant to do it alone. The Respondents also refused to take part in the arbitral proceedings. Not even the service upon them of the arbitral award itself or of the notice of filing it bothered them.

However upon service on them of this application and when it came up for hearing they sought through their advocate an adjournment to enable them file a replying affidavit in opposition and to give them time to apply to set aside the award. Given the provisions of Section 35 of the Arbitration Act requiring applications to set aside arbitral awards to be made within three months of receipt of the arbitral award, I found no good reason to adjourn the hearing of this application which in any case is supposed to be made ex-parte. I refused the application for adjournment and allowed counsel for the applicant to argue it ex-parte.

Having perused the application with the supporting affidavit and the annexures thereto and having considered counsel's submissions and the arbitral award having not been set aside I am satisfied that the application is in order and I, grant it as prayed.

DATED and delivered this 23rd day of May, 2005

D.K. MARAGA

JUDGE