

REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA AT
MILIMANI COMMERCIAL COURTS, NAIROBI**

Civil Case 59 of 2005

MUGOYA CONSTRUCTION & ENGINEERING LTD...PLAINTIFF

-V E R S U S-

NATIONAL SOCIAL SECURITY FUND

BOARD OF TRUSTEES (N.S.S.F.).....1ST DEFENDANT

SYMBION INTERNATIONAL LTD.2ND DEFENDANT

R U L I N G

After delivering the ruling herein dated 27th July, 2005, Mr. King'ara for the plaintiff/respondent applied for a stay for 60 days during which period the status quo should be maintained. He needs the time to seek his client's instructions as to whether they should prefer an appeal. At the same time, S. 7 of the Arbitration Act entitles them to request from the High Court an Interim measure of protection. He sought a date for the hearing of the plaintiff's application dated 31st January, 2005.

In response, Mr. Macharia Njeru for the 1st Defendant strongly opposed the application and submitted that the plaintiff's application dated 31st January, 2005 was not made under the Arbitration Rules. He further submitted that granting the orders sought would be highly prejudicial to his client, and that it would give the plaintiffs through the back door what they failed to get through the front door.

Mr. King'ara, in reply, said that the attitude of the defendant's counsel fortifies his fears that they want to bulldoze matters away from the court.

I have considered the issues raised by both sides. S. 7 of the Arbitration Act is clear to the effect that it is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure. The application filed by the plaintiff on 31st January, 2005 was not filed under S. 7 of the Arbitration Act. For some understandable and quite pertinent reasons, it was filed under the requisite provisions of the Civil Procedure Rules. While accepting that a party to arbitration proceedings is entitled to apply for some measure of protection, I cannot give a date for that application as it is not brought under the Arbitration Act. As the court has not been told how the 1st defendant will be prejudiced by any interim order of stay, and in order to enable the plaintiff to make an appropriate application, I think that it is meet and just to grant a temporary stay pending the making of that application for interim protection.

For the above reasons, I accordingly grant the plaintiff a stay of 60 days from today, during which period the status quo will be maintained.

Dated and delivered at Nairobi this 2nd day of August 2005.

L. NJAGI

JUDGE

