

REPUBLIC OF KENYA
IN THE HGH COURT AT
NAIROBI MILIMANI LAW COURT
CIVIL SUIT 2213 OF 2001

TEKIE MICHAEL t/A “SPEEDY STUDIO”.....PLAINTIFF

VERSUS

UAP PROVINCIAL INSURANCE COMPANY LIMITED.....DEFENDANT

RULING

By his Chamber Summons of the 29th April 2004 the Applicant seeks to set aside the arbitral award dated the 28th January 2004 on the grounds set out in the application and the Applicant’s affidavit in support.

The Respondent opposed the application on the grounds set out in the Grounds of Opposition filed herein and the Replying Affidavit of Kossy Bor.

The arbitrator herein was appointed under the provisions of Order 45 of the Civil Procedure Rules and the Respondent rightly submits that the provisions of Section 35 of the Arbitration Act do not apply to arbitrations under Order 45 of the Civil Procedure Rules.

Under Order 45 rule 16, applications under rules 13, 14 and 15 of the order must be made within 30 days of receipt by the Applicant of the notice of the filing of the arbitral award. The award was filed on the 28th January 2004 and is clearly out of time. Even if I were to allow the applicant to rely on the provisions of Order 45 he has failed to show any grounds on which the court could set aside the award. In order to succeed the Applicant must show that one of the grounds relied on has not been observed. It is alleged that the Arbitral award dealt with matters beyond the scope of the reference. However, there is no evidence of this in the supporting affidavit.

Secondly, it is alleged that the award is in conflict with the provisions of the Insurance Act. Again there is no evidence of this in the supporting affidavit.

The Applicant appears to be dissatisfied with the conduct of the arbitrator and his decision. However, these are not matters in respect of which a court can interfere. In the result the application fails and I dismiss it with costs to the Respondent.

DATED and DELIVERED at NAIROBI on 30th September 2005

P.J RANSLEY

JUDGE