

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 293 OF 00

MINOLTA INDUSTRIES LTD.....PLAINTIFF

v

KENYA NATIONAL TRADING CORPORATION LTD.....DEFENDANT

RULING

This is an application under section 35 of the Arbitration Act for an order to set aside an arbitral award made on November 4, 1999 and for the matter to be heard by the court. The application is supported by an affidavit sworn by Kenneth Wabwire Akide, an advocate of this court, who has the conduct of the matter on behalf of the applicant.

The grounds on which the application is based are that:-

- (a) The applicant was under some incapacity and did not participate in certain stages of the arbitral proceedings due to orders made by the arbitrators.
- (b) That the arbitrators refused to accord the applicant an opportunity to present its submissions or reply to the claimant's submission.
- (c) That the arbitrators breached the fundamental rules of natural justices by directing that the applicant's submissions could only be received and or considered after payment of a deposit to the arbitrators.
- (d) That the arbitrators are guilty of misconduct and mishandled the arbitration to such an extent that there was a miscarriage of justice.

Annexed to the affidavit of Mr Akide are various documents which include the award sought to be set aside as well as several letters written by one of the joint arbitrators which, amongst other matters, raise the question of payment of the deposit and other fees for the filing of submissions. In respect of these matters there is clear evidence that time was extended to enable Mr Akide's client to file its submissions and to pay the fees. By annexing these documents to his affidavit, Mr Akide obviously intended to substantiate the grounds of his complaints. However, having gone through all the documents, I can see no evidence in support of what is stated in the application. On the contrary the documents contain several indicators of Mr. Akide's and his client's refusal or neglect to participate fully in the arbitral process.

The award itself contains the following statement:

“Notwithstanding Notice to Respondent (the applicant), the Respondent failed to submit any submissions.”

The applicant claims that the arbitrators directed that the applicant's submissions could only be received and/or considered after payment of a deposit to the arbitrators and the letters annexed to Mr Akide's affidavit are supposed to contain evidence of such a direction. Again, a perusal of the said letters shows no connection whatsoever between the request for the deposit and filing of the submissions. In any case, no complaint was made to the arbitrators by the applicant regarding the request for payment of the deposit and fees. It is obvious in my view that the applicant's failure to file its submissions cannot be blamed on

the arbitrators. Similarly, the claims of incapacity, misconduct and mishandling of the arbitration by the arbitrators is not supported by any evidence; indeed the allegations are so devoid of substance and merit as to deserve no further consideration.

For the above reasons, the application to set aside the award is dismissed with costs.