

REPUBLIC OF KENYA

Emebet Melaku Mwangi v Hebest Menna Degefu

High Court of Kenya at Nairobi October 6, 2000

Milimani Commercial Courts

T Mbaluto, Judge

Civil Case No 962 of 2000

October 6, 2000 T Mbaluto, Judge delivered the following ruling.

On June 30, 2000, Honourable Justice Hewett made an order in this matter by virtue of which M/S Nthiga & Associates of Kenya Bankers House, Nairobi were appointed as liquidators to investigate the assets and liabilities of the partnership (presumably existing between the parties hereto), value it and then dissolve it giving an option to either partner to buy the other parties share.

A further order was made standing the matter for mention on July 4, 2000 for the purposes of reporting progress. There was however no mention in the order of any arbitral proceedings and clearly Order XLV of the Civil Procedure Rules was not in any way contemplated by the order. As to that, the order is as clear as any can be. M/S Nthiga & Associates are thereby referred to as liquidators and not arbitrators and what they come up with is 'a report' and not an award.

It must therefore have been a bit of a surprise to the respondent to be served with an application for the enforcement of a purported award when there was no arbitration. The position was compounded by an attempt to reduce the time within which an application to enforce the award could be made but having regard to the view I take of the matter, nothing arises from that futile attempt. In any case, as observed above, there was no arbitral award in this matter and consequently Order XLV rule 16 of the Arbitration Act has no application.

For all the above reasons, I find that there is no merit in this application and it must therefore be dismissed with costs. It is so ordered.