



**Alyas Living Limited v Trident Architects International Limited;
M'Mayi (Interested Party) (Miscellaneous Application E783 of 2022)
[2023] KEHC 2672 (KLR) (Commercial and Tax) (13 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2672 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS APPLICATION E783 OF 2022
DAS MAJANJA, J
MARCH 13, 2023**

BETWEEN

ALYAS LIVING LIMITED APPLICANT

AND

TRIDENT ARCHITECTS INTERNATIONAL LIMITED RESPONDENT

AND

HOWARD A M'MAYI INTERESTED PARTY

RULING

1. The applicant has moved the court by the notice of motion dated November 1, 2023 under sections 13 and 14 of the *Arbitration Act*, 1995 seeking orders, inter alia, that Eng Howard A M'mayi be removed from acting as the sole arbitrator in the arbitration between the applicant and the respondent and his appointment be revoked and that the arbitral proceeding commence *de novo* before another arbitrator to be appointed by the Chairman of the Chartered Institute of Arbitrators. The applicant also seeks an order that the Arbitrator is not entitled to any fees since the acts complained of are self-inflicted.
2. The application is supported by the affidavit of Ramzan Alyas sworn on April 1, 2022. The thrust of the deposition is that the Arbitrator had during the pendency of the proceedings appointed the respondent's counsel to act for him in an undisclosed election petition. That since there is advocate-client relationship between the Arbitrator and counsel for the respondent, the Arbitrator is manifestly conflicted and biased.
3. When the application came up for directions on March 7, 2023, the counsel for the respondent conceded to the application. In effect the respondent agreed to terminate the arbitral proceedings and to start the matter afresh before a difference arbitrator. The only issue remaining is the arbitrator's fees



and expenses. Under section 14(3) of the Arbitration Act the court is empowered to make orders as to the arbitrator fees and or expenses on the following terms:

14(7) Where an arbitrator is removed by the High Court under this section, the court may make such order as it thinks fit with respect to his entitlement (if any) to fees or expenses or the repayment of any fees or expenses already paid.

4. Under section 14(4) of the Arbitration Act, an Arbitrator who has been challenged has the right to appear and be heard on the application. Since the only issue remaining concerns the Arbitrator's entitlement to fees, I direct the applicant to serve the application and this ruling on the Arbitrator to enable him respond not only to the allegations against him but also state his position regarding the fees and expenses.

DATED AND DELIVERED AT NAIROBI THIS 13TH DAY OF MARCH 2023.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango

Mr Shisanya instructed by Shisanya and Company Advocates for the Applicant

Ms Ndugire instructed by Amadi and Amadi Advocates for the Respondent.

