REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. E 347 OF 2019

WER GMBH.....PLAINTIFF

-VERSUS-

KENYA AIRPORTS AUTHORITY.....DEFENDANT

RULING

The Defendant/Applicant herein **Kenya Airports Authority** through its Advocates filed a Certificate of Urgency Application dated 26th November 2019, urging the Court to hear its matter on priority basis for reasons;

a) That the Plaintiff filed this suit seeking, among other things, payment of a sum of Euros One Million Three Hundred and Eighty-One Thousand, Five Hundred and Thirteen and Seventy-one cents.

b) That the said payment sought relates to the Contract for Plant Design, Supply and Installation of Interim Passenger Emergency Terminal Facilities at Jomo Kenyatta International Airport dated 11th June 2012 (hereinafter referred to as **"the Contract")** governing the parties thereto.

c) That the Dispute resolution mechanism provided for in **Clause 46** of the Particular Conditions of the Contract and **Clause 46.5** of the General Conditions of the Contract is by way of Arbitration.

d) That the Dispute between the parties herein therefore ought to be determined by way of Arbitration as provided in the contract.

e) That time for filing statement of Defense in this case was already running out and unless this Court urgently intervenes by certifying this application as urgent and grant *ex-parte* interim orders of stay of proceedings herein, the Plaintiff will be at liberty to proceed to apply for judgment in default of defense against the defendant therefore occasion great injustice upon the Defendant.

In a Chamber summons filed together with the application, brought pursuant to **Section 6(1) and (2) of the Arbitration Act 1995, Rules 2 and 8 of the Arbitration Rules 1997**, the Applicants sought orders;

a) That pending *inter partes* hearing hereof, this Court stays the proceedings herein.

b) That upon *inter partes* hearing, this Court stays the entire proceedings and to refer this dispute for hearing and determination by way of arbitration.

c) That the costs of this application be borne by the Plaintiff

The Application was based on grounds;

It is trite law that courts of law cannot rewrite a contract already made by the parties, in this case particularly the agreement to arbitrate any contractual dispute which may arise from the contract.

That this application had been brought timeously with utmost urgency and the Defendant/Applicant had not taken any steps to further the proceedings filed in this Court save for the Memorandum of Appearance filed together with the instant application.

That this Court has the constitutional obligation to promote alternative dispute resolution mechanisms, including arbitration especially where a valid Arbitration clause is demonstrated, and where the law so provides.

That the ends of justice in this matter require that the Court stays the entire proceedings before it and refer this matter for settlement by Arbitration.

DEFENDANT/APPLICANT'S WRITTEN SUBMISSIONS

The Applicant in support of their application submitted that the dispute mechanism provided in **Clause 46.5 (a) of the Particular Conditions of the Contract and clause 46.5** of the **General Conditions of the Contract** (at pages 59 and 128 of the Plaintiff's Bundle of Documents) is by way of Arbitration. The Clause provides thus;

a) **Clause 46.5 (a)** of the Particular Conditions provides that;

> ***"Contracts with foreign contractors: Any dispute, controversy or claim arising out of or relating to this contract, or breach, termination or invalidity thereof, shall be settled by Arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force."***

b) **Clause 46.5** of the General Conditions of the Contract provides that;

> ***"unless indicated otherwise in the PC, any dispute not settled amicably and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration."***

It was the Applicant's submissions that from the onset this Court has no jurisdiction to entertain the instant proceedings by the Plaintiff, which jurisdiction is ousted by the said Arbitration clause. The dispute between the parties herein therefore ought to be determined by way of Arbitration as provided in the contract signed by both parties. The parties are bound by the express provisions of the Contract. In the case of ***Union Technology Kenya Ltd vs County Government of Nakuru [2017]eKLR,*** the High Court of Kenya at Nakuru held;

> ***"Parties in an agreement/Contract are bound by the mutually agreed and express terms of their agreement. It is not the duty of a court to rewrite the agreement for the parties."***

That the instant proceedings ought to be stayed and the instant matter be referred to Arbitration as per law provided. **Section 6 of the Arbitration Act** is clear and couched in mandatory terms on stay of proceedings and referral of a dispute to Arbitration where a contract provides for determination of a dispute by way of Arbitration. This section provides;

> ***"A court before which proceedings are brought in a matter which is the subject of an Arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or otherwise acknowledges the claim against which the stay of proceedings is sought, stay the proceedings and refer the parties to Arbitration."***

In the case of ***Niazsons (K) Ltd vs China Road & Bridge Corporation Kenya [2001]eKLR***, the Court of Appeal at Nairobi Held;

> ***"All that an applicant for stay of proceedings under section 6 (1) of the Arbitration Act of 1995 is obliged to do is to bring his application PROMPTLY. The court will be obliged to consider three things: whether the applicant has taken any steps in the proceedings other than steps allowed by the section; whether there is any legal impediment on the validity, operation or performance of the arbitration agreements and whether the suit indeed concerned a matter agreed to be referred to arbitration." [Emphasis ours]."***

The Applicant submitted that they had taken steps with regard to the instant proceedings, by filing the instant application urging that the matter be referred to Arbitration as both parties had agreed in subject contract that any dispute between them should be solved by Arbitration. In the case of ***Africa Spirits Limited vs Prevab Enterprises Limited [2014] eKLR*** the High Court of Kenya at Nairobi held;

> ***"what section 6 requires is the defendant to file the summons to refer the matter to Arbitration at the earliest: that is at the time he enters an appearance in the matter."***

In the case of ***Dock Workers Union Limited vs Messina Kenya Limited [2019]eKLR***, the Court of Appeal at Mombasa held that;

> ***"On the contrary and as rightly held by the learned trial Judge, the parties herein had categorically agreed to refer any ensuing dispute as regards the contract of employment herein to Arbitration. Parties have the freedom to choose the regime of the law they want to be governed under and embody it in their contract of employment which spells out how disputes between them would be resolved, that is perfectly within their rights. The parties entered into the said agreement freely and opted to oust other means of dispute resolution mechanisms other than Arbitration. They cannot turn around and denounce the Arbitration agreement. It is also worth of note that the Constitution of Kenya itself has given prominence to Arbitration by acknowledging it as one the alternative modes of dispute resolution that courts should encourage."***

In the above case of ***Union Technology Kenya Ltd vs County Government of Nakuru [2017] eKLR***, the court stated;

> ***"I have rendered above that section 6(2) does not prohibit a court from referring a dispute to Arbitration despite provisions of section 6(1) of the Arbitration Act. In my view the nature of the dispute and the contract subject of the dispute must be taken into account to determine its appropriateness for Arbitration or otherwise."***

They further submitted that **Article 159 (2) (c) of COK 2010**, is expressed in mandatory terms that this Court is under a duty to promote alternative forms of dispute resolution mechanisms including arbitration. In the case of ***Africa Spirits Limited vs Prevab Enterprises Limited [2014] eKLR*** the High Court of Kenya at Nairobi held;

> ***"Some of the leading decisions on section 6 of the Act that I set out earlier, predate the 2009 amendments to the section. Fundamentally, they predate the Constitution of Kenya 2010. Article 159 (2) of the Constitution now provides that in exercising judicial authority, the courts and tribunals shall be guided by the following principles-***
>
> ***(c) Alternative forms of dispute resolution including reconciliation, mediation shall be promoted, subject to clause (3);"***

PLAINTIFF/RESPONDENT'S SUBMISSIONS

The Plaintiff/Respondent in opposition to the instant application submitted that prior to the filing of the Application under consideration, filed this suit against the Defendant for the following reasons;

a) That by a contract writing dated 11th June, 2014, ("the Contract"), the Applicant/Defendant as employer, contracted the Plaintiff to design, manufacture, supply and install, test and commission international passenger emergency terminal facilities at Jomo Kenyatta International Airport under the Tender Number KAA/ES/JKIA/894/C.

b) That it was a term of contract that the Respondent would inter alia design, manufacture, install and complete facilities in accordance with the contract, which facilities should be fit for the purposes for which they were intended as defined in the contract.

c) That the Defendant in line with the terms of the contract, specifically the Particular Conditions, appointed Netherlands Airport Consultants BV (NACO) (hereinafter referred to as the "Project Managers") as the Project Managers.

d) That the Respondent stated that it completed all works on the facilities on or about 4th March 2016, and was issued with a Completion Certificate by the Project Manager, confirming the facilities were completed and in line with the terms of the contract, handing over the facilities to the Applicant/Defendant.

e) That attached to the Completion Certificate the Project Managers detailed various outstanding items to be completed, which the Plaintiff undertook and completed and was confirmed to the Defendant by the Project Manager vide its letter dated 19th December 2017.

f) That during the pendency of the contract the Plaintiff had at the instance of the Defendant incurred additional expenses to which it claimed against the Defendant

g) That the Plaintiff claims were negotiated with the Defendant and the Project Manager, which negotiations resulted in the RHH Claim Evaluation Report dated April 2016, by the Project Manager, summarizing the Plaintiff's claim and forwarding the Certified Certificate to the Defendant for payment.

It was the Respondent's submission that despite several requests for payment, in light of completion of the works as stipulated under the contract, the Defendant, failed, declined, refused and or neglected to settle the outstanding amounts due and owing to the Plaintiff.

Further that, the Defendant did not make any formal complaints with regard to the performance or quality of the works completed by the Plaintiff in terms of the contract and despite that did not make payment to the Plaintiff.

It submitted that prior to filing of this suit, a meeting was held between the Plaintiff's and the Defendant's representatives on 15th February 2019, whereupon the Defendant admitted and stated;

a) That the amount of Kenya Shillings Twelve Million Five Hundred and Fifty-Four Thousand, Seven Hundred and Eighty-one (Ksh 12,554,781.00) being provisional sum was due for payment and would be settled within two (2) months of the meeting.

b) That amount of Kenya Shillings Seven Hundred and Ninety-Four Thousand and Four Shillings, Eighty Cents (Ksh 794,004.80) would be released upon issuing a letter to the Plaintiff outlining the outstanding issues, which was yet to occur and further despite operational acceptance of the facilities by the Defendant.

The Plaintiff/Respondent relied on **Section 6 (1) and (2) of the Arbitration Act,** which section provides;

> ***1) A Court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party applies not later than the time when that party enters appearance or otherwise acknowledges the claim against which the stay of proceedings is sought, stay the proceedings and refer the parties to arbitration unless it finds-***
>
> ***a) That the arbitration agreement is null and void, inoperative or incapable of being performed; or***

b) That there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.

2) Proceedings before the court shall not be continued after an application under subsection (1) has been made and the matter remains undetermined.

The Respondent submitted that the Applicant sought to invoke **clause 46.5** of the Contract.

It relied on the case of ***Clearspan Construction (A) Limited vs East African Gas Co. Ltd [2008] eKLR***, where Justice Sergon had this to say;

"it is well settled that a defendant cannot succeed to obtain a stay by relying on an arbitration clause unless there is a dispute. I am convinced that a refusal to pay an outstanding debt cannot by any stretch of imagination amount to a dispute. It is not also in dispute that the Defendant has not filed a defense to resist the Plaintiff's claim.

I refer to The Law and Practice of Commercial Arbitration in England, by Sir Michael Mustill, London Butterworths 1982 pages 90-91 which discussed the effect of an undisputed claim as follows:-

"undisputed Claims

First, an action can properly be brought in the High Court in respect of an admitted claim, even though the contract contains an arbitration clause. The claimant may apply for summary judgment, under RSC Ord 1420, and the defendant cannot either fend off judgment or obtain a stay simply by relying on the arbitration clause for unless there is a dispute, there is nothing to be referred to arbitration. The same principle applies to a claim which is partly admitted: the claimant is entitled to judgment on the admitted portion, and a stay will be granted as to the remainder."

In ***UAP vs Michael John Beckett it was held;***

"In our view, it is within the province of the court, when dealing with an application for stay of proceedings under section 6 of the Arbitration Act, to undertake an evaluation of the merits or demerits of the dispute. In dealing with the application for stay of proceedings and the question whether there was a dispute for reference to arbitration, Mutungi J. was therefore within the ambit of section 6 (1)(b) to express himself on the merit or demerit of the dispute. Indeed, in dealing with a section 6 application, the court is enjoined to form an opinion on the merits or otherwise of the dispute."

Ellis Mechanical Services Ltd vs Wates Construction Ltd [1978] quoted in UAP supra as follows;

"There is a point on the contract which I might mention upon this. There is a general arbitration clause. Any dispute or difference arising on the matter is to go to arbitration. It seems to me that if a case comes before the court in which, although a sum is not exactly quantified and although it is not admitted, nevertheless the court is able, on an application of this kind, to give summary judgment for such as appears to be indisputably due, and to refer the balance to arbitration. The defendants cannot insist on the whole going to arbitration by simply saying that there is a difference or dispute about it. If the court sees that there is a sum which is indisputably due then the court can give judgment for that sum and let the rest go to arbitration, as indeed the master did here."

DETERMINATION

The defendant raised by Certificate of Urgency filed on 27th November 2019 and the Supplementary affidavit filed by the Defendant's Corporation Secretary raised the question of jurisdiction of this Court to hear and determine the dispute at hand.

On the one hand, the Plaintiff in the Plaint claimed, by virtue of the contract of 11th June 2014 executed by both parties, the terms of performance of the contract were as outlined in paragraph 4 of the Plaint. The Plaintiff completed works on 4th March 2016 and was issued with completion certificate. There was attached to the Completion Certificate the Project Managers detailed various outstanding items to be completed. The Plaintiff completed the outstanding tasks and the Project manager vide letter of 19th December 2017 confirmed to the Defendant the completion.

During the pendency of the contract the Defendant included works on in the contract that the plaintiff undertook and extended time periods while incurring extra costs as outlined in Paragraph 9 of the Plaint.

The defendant, Project manager and Plaintiff discussed the matter and came up with Claim Evaluation Report by the Project Manager of April 2016. The Project Manager's final assessment in the Report was 1,381,513.71 Euros.

The Plaintiff also claimed provisional sums as per paragraph14 of the Plaint. The amount of Ksh 12,554,781 was due and owing under IPC no 5 (ML 2535) of 22nd April 2016 which the Plaintiff averred the Defendant acknowledged and confirmed to be due for payment.

The Plaintiff also claimed the balance of retention money, Ksh 794,004.80, being the remaining value of the certified works as per paragraph 15 of the Plaint.

The Defendant objected to the Court's jurisdiction for the following reasons;

The issues raised by the plaint relate to performance of the Contract between the parties which includes an arbitration clause/agreement on settlement of disputes. **Clause 46.5 of the Contract.**

The Defendant through the Supplementary Affidavit by Corporation Secretary of the Defendant filed on 24th February 2020, disputed performance of the Contract as alleged by the Plaintiff. At paragraphs 6, 8 & 9 of the Affidavit, the Defendant asserted that the works were not satisfactorily performed and were not completed as provided in the contract. The Defendant deposed that it did not admit the amounts payable and the outcome of the meetings was not agreed. One of the resolutions from the meeting was to appoint an Arbitrator. So, it is not a case of outstanding debt, but of contested works, claims and payments.

The Defendant averred that the Court was bound to uphold the Constitution which provides for recognition of ADR mechanisms and grant the order to have the matter proceed to Arbitration as per the Arbitration Agreement outlined above.

The Plaintiff filed Replying Affidavit in court on 18th February 2020. The copy was misplaced and/or lost and on 2nd July 2020, this Court requested Deputy Registrar Commercial & Tax to contact the parties' respective advocates and avail the court a copy, which was furnished and is now placed in the Court file. In the said affidavit, the Plaintiff deposed that pursuant to the meeting held on 15th February, 2019 between both Plaintiff's and Defendant's representatives, the Defendant admitted and agreed to payment of Ksh 12,554,781 within 2 months. A copy of the minutes of the said meeting were annexed to the Affidavit and marked **HR Pg 2-4**.

The Plaintiff reiterated that there was no dispute as the claims on which the payments are sought are based on reports by the Defendant's Project Manager and the Defendant admitted the debt and promised to pay and settle the debt.

ANALYSIS

This Court is guided by **Section 6 & 10 of Arbitration Act** which outline when stay of proceedings is granted to facilitate Arbitration proceedings to commence as per the Arbitration clause /Agreement and the Court's jurisdiction and intervention is as governed by the Arbitration Act.

The case of Nanchang ***Foreign Engineering Co (K) Ltd vs Easy Properties Kenya Ltd HCCC 487 of 2013*** observed that before stay of proceedings order under **Section 6 of the Arbitration Act** is granted what ought to be considered is;

> ***A. That the application seeking a stay of proceedings with a view to having the matter referred to Arbitration is presented to the Court not later than the time when the Applicant enters appearance or otherwise acknowledges the claim against which stay of proceedings is sought***
>
> ***B. That the Arbitration agreement is not null and void, inoperative or incapable of being performed; or***
>
> ***C. That there is a dispute between parties with regard to the matters agreed to be referred to Arbitration.***

In the instant case, the Plaintiff deposed that the Defendant was served with the Plaint on 30th October 2019 and they entered appearance on 27th November 2019 thereby delaying for 13 days. This the Court could not verify and confirm the date of service in the absence of Affidavit of Service filed in Court to confirm actual date and mode of service. Nevertheless, the Defendant duly entered appearance and filed the instant certificate of Urgency application.

Secondly, it is not in dispute that **Clause 46.5(a)** of Particulars Conditions of the Contract and **Clause 46.5** of the General Conditions of Contract housed at **Pg. 59 & 128** of the Plaintiff's bundle are Arbitration Agreements/Clauses on the dispute resolution mechanism chosen by the parties to the Contracts and it is Arbitration. The Arbitration Clauses are valid and capable of performance as to the parties' choice of forum. The Arbitration Clause essentially provides that where a dispute or difference between the parties arising from these contracts that the Dispute Board does not amicably and finally resolve, then parties ought to refer the dispute(s) to Arbitration.

The other requirement for stay of proceedings order is whether there is a dispute(s) to be referred to Arbitration.

This Court is persuaded by the decision in ***Clearspan Construction (A) Limited vs East African Gas Co. Ltd [2008] eKLR***, supra; that a party seeking stay of proceedings so as to commence Arbitration proceedings vide the Arbitration Clause/Agreement ought to confirm the dispute(s) arising from Contract. In this case the Contract for Plant Design Supply & Installation of Interim Passenger Emergency Terminal Facilities at JKIA between the Plaintiff and Defendant.

In the instant matter, the Plaintiff made 3 claims against the Defendant under the Contract (s)

a) Extra works not in the contracts and incurred additional payments

b) Provisional sums due and owing under IPC No 5 (ML 2535)

c) Retention money being the remaining value of certified works.

The Defendant objected, denied and contested the 3 claims in the Supplementary Affidavit. The defendant disputed the Plaintiff's reliance on **Clause 25.3.4 of Contract Performance** the Plaintiff relied on and deposed that there was need for interpretation of all provisions of the Contract. The Defendant challenged completion of works and quality of performance of works as per the contract by the Plaintiff.

To these issues raised by the Defendant the Court concurs that parties ought to refer these dispute(s) to Arbitration as stipulated in the Arbitration Agreement/Clause in the contract executed by both parties.

However, with regard to Plaintiff's claim against the Defendant provisional sums due and owing under IPC No 5 (ML 2535)Ksh 12.554,781/-, the Plaintiff deposed that at the meeting held on 15th February 2019, the Defendant admitted this debt and promised to pay.

The Defendant contended that it never admitted the sums claimed by the plaintiff as evidenced by the minutes of the meeting of both representatives of the Plaintiff and the Defendant, which meeting was held on 15th February 2019 at the Defendant's premises. The deponent of the Supplementary Affidavit was not in the meeting that culminated to admission of certificate **No. 5** or contesting payment of certificate No.5, the admission of debt as outlined as above from meeting**.** The Defendant asserted that it was agreed that the Plaintiff would initiate the process of appointment of Arbitrator to assess the amount of work done by the Plaintiff and the payment due, if any as referred to the Replying Affidavit.

The Court read through the Minutes of Meeting of 15th February 2019 at Defendant's boardroom attended by GM, Procurement & Logistics of the Defendant as Chairperson, Airport Engineer, JKIA representing the Defendant, Representative of the Plaintiff Company and Legal Counsel from the Defendant. After discussions on the Plaintiff's claims, it was agreed as outlined as follows;

> ***The Chairperson gave a brief background of the project and requested that the Engineers assessment of Roder's claim be projected to enable members appraise themselves with the particulars of the claim.***
>
> ***The Project Engineer NACO in a report dated April 2016 assessed the total amount payable by the Authority to Roder was Euro 1,381,513.71. Roder stated that interim certificate No 5 of Ksh 12,554,781 dated 12th April 2016, though certified by the Project Engineer had also not been settled to date by the Authority.***
>
> ***Further, the 2nd Moiety of retention sums was due for payment by the Authority.***

To the Plaintiff's 3 claims, with regard to the 2nd Claim of interim certificate No 5 of Ksh 12,554,781 dated 12th April 2016, certified by the Project Engineer, the Minutes indicate the following resolution;

> ***The Authority confirmed that Certificate No 5 was due for payment. However, the same was delayed by administrative procedures on the Authority's part on utilization of contingency sums. It was clarified that IPC 5 is related to Provisional Sums of the Contract. It was agreed that KAA will resolve the outstanding administrative procedures to ensure settlement of the Interim Payment Certificate No 5 within 2 months of the meeting.***

The Defendant conceded that with regard to Interim Certificate No 5 certified by Project Engineer, that payment was due and owing. The Defendant undertook to resolve the administrative procedures and make payments within 2 months from the date of the meeting. There was no contest to this claim or challenge to the Engineer's purported assessment by members at the meeting. The Defendant was at liberty to contact and/or avail the Project Engineer(s) in the meeting to verify any issues on the claim if challenged and if not available the meeting would be adjourned. The Defendant did not present any documents and/or correspondence as presented at the meeting to show any anomaly or discrepancy with the processing of the claim by either Plaintiff or Project Engineer. In the absence of such evidence placed before the Court, for example any correspondence by KAA revoking admission of the debt or contesting certificate No.5 payment, the admission of debt as outlined above from Minutes of the Meeting of 15th February 2019 confirms a debt awaiting settlement. The defendant has not shown why the outstanding debt though undisputed is not settled. In the circumstances, there is no dispute or contest to this claim. It would be unjust to refer the admitted claim with the disputed claims to Arbitration.

In the case of ***Adcock Ingram East Africa Ltd Ltd vs Surgilinks [2012] eKLR*** the Court considered similar circumstances and observed;

> ***"I would agree with the Defendant that it is an abuse of the Court process for parties to refer their disputes to Court if the Agreement that gives rise to the proceedings contains an arbitration clause. However, if a certain portion of the claim is not in dispute it is improper to refer the entire claim to arbitration. Before a Court can order parties to go to Arbitration it has to be satisfied that there is indeed a dispute over the claim in issue."***

With regard to the other claims raised during the Meeting between Plaintiff and Defendant's representatives, it was resolved as outlined in the minutes;

> ***"On the claim assessment, The Chairperson informed the meeting that there were conflicting positions on how the Engineer arrived at the computed sums leading to an impasse on settlement of the same. He advised some of the claims [not all claims] required strict proof and others were subject to interpretation of various contract documents. In this regard, it was best the same be subjected to the review and determination of an independent party to enable payment…"***

The resolution of the meeting was that where the claim and/or payment was disputed or there were conflicting narratives, these disputes were to be referred to Arbitration as per the Arbitration Agreement/Clauses in the contracts. The claim regarding the certificate No. 5 is admitted and the debt is not settled. There is no dispute. This Court endorses this view as it cannot rewrite the Parties contracts, that contract disputes shall be referred to Arbitration.

DISPOSITION

1. **The Defendant's application of 27th November 2019 is partly upheld and partly dismissed as follows;**

2. The Defendant shall pay the Plaintiff Ksh 12,554,781 as admitted by the Defendant in the Minutes of the Meeting of 15th February 2019 with interest at Court rates and costs.

3. With regard to the Plaintiff's remaining claims the Court grants stay of proceedings and orders the dispute(s) referred to Arbitration as per the Arbitration Clause/Agreement in the parties' contract(s).

DELIVERED SIGNED & DATED IN OPEN COURT ON 13TH JULY 2020 (VIRTUAL CONFERENCE)

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF;

MR. OMWENGA FOR THE DEFENDANT/APPLICANT

MR MANDA FOR THE PLAINTIFF/RESPONDENT

TUPET- COURT ASSISTANT

Mr. Omwenga: We seek certified copy of the Ruling and proceedings and leave to appeal.

Court:

1. The Application by the Defendant to have certified copies of the Ruling and proceedings is granted.

2. Leave to appeal granted, stay of execution for 30 days.

Mr Manda: We seek certified copies of the Ruling and proceedings and leave to appeal.

Court: The leave to appeal is granted for 30 days and stay of execution. The application for certified copies of Ruling and proceedings is granted.

M.W. MUIGAI

JUDGE