



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**CIVIL CASE NO.4 OF 2018**

**TRI-SOURCE ENGINEERING LTD.....PLAINTIFF**

**-VERSUS-**

**NATIONAL IRRIGATION BOARD (NIB).....DEFENDANT**

**RULING**

1. *Tri-Source Engineering Limited*, the plaintiff, filed this claim alleging the failure of the defendant, *National Irrigation Board*, to pay for the work it undertook in murraming the road in *Mwea Irrigation Scheme*. The Plaintiff’s claim for that work is **Ksh 20,674,332/=**.
2. This matter was referred to Mediation and my perusal of the Mediator’s file reveals that parties agreed to carry out a site visit, which was undertaken. Thereafter the Mediator invited the parties to try and see whether a settlement could be reached.
3. On **26<sup>th</sup> July 2018**, the plaintiff and its counsel attended to the Mediator’s meeting but the defendant only sent its advocate who stated that she had no instructions to commit the defendant on a settlement. The Mediator therefore forwarded this matter to the court stating that parties had not reached a settlement.
4. The matter came before me and the plaintiff requested the court to levy sanctions against the defendant for failing to comply with the Mediation process.
5. Although both parties submitted before me on why or why not for sanctions to be levied against the defendant in my view those submissions were in error. This is because the Mediator did not file as per paragraph 9 of the Chief Justice Practise Direction on Mediation, a certificate of non compliance. What the Mediator filed was a notice that parties had failed to reach a settlement.
6. The defendant by the affidavit of *Innocent Ariemba*, its manager, stated that indeed parties would not be able to reach a settlement through mediation. That being the case, no sanctions will be levied against the defendant. This case shall proceed for hearing before this court.
7. Parties are therefore directed to comply with Case Management Conference and at the reading of this Ruling a date will be issued to confirm such compliance.

**DATED, SIGNED and DELIVERED** at **NAIROBI** this **13<sup>th</sup>** day of **December**, 2018.

**MARY KASANGO**

**JUDGE**

**Ruling read and delivered in open court in the presence of:**

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendant

**MARY KASANGO**

**JUDGE**