



**REPUBLIC OF KENYA**

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

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**MISC NO. 39 OF 2014**

**KAY CONSTRUCTIONS COMPANY LTD.....APPLICANT**

**-Vs-**

**THE ATTORNEY GENERAL .....RESPONDENT**

**RULING**

1. The application before the court is a Chamber Summons dated 8<sup>th</sup> October 2013 filed under Section 36 of the Arbitration Act, 1995, Rule 9 of the Arbitration Rules, 1997.
2. The application seeks the following orders:
  1. That this Honourable court be pleased to make orders or recognition of the Arbitral Award made the 22<sup>nd</sup> day of February, 2011 by Eng. Joseph T. Thuo; the Arbitrator.
  2. That this Honourable court be pleased to make orders of enforcement of the arbitral award made the 22<sup>nd</sup> day of February, 2011 by Eng. Joseph T. Thuo; the arbitrator as a judgement of this Honourable court.
  3. That further to prayers 2 and 3 above, this honourable court be pleased to issue a decree in enforcement of the arbitral award made the 22<sup>nd</sup> day of February, 2011 by Eng. Joseph T. Thuo; the Arbitrator, as a judgement of this Honourable court.
  4. That the costs of this application be provided for.
3. The application is premised on the grounds set out therein, and is said to be supported by Affidavit of **ALICE KIRII**. However, the Supporting Affidavit dated 8<sup>th</sup> October 2013 and filed in court on 23<sup>rd</sup> October 2013 is sworn by **HASMITA PATEL**. Also, Replying Affidavit (should have been a Supplementary Affidavit dated 21<sup>st</sup> July 2014) still in support of the application is sworn by the said **HASMITA PATEL**. There is no Affidavit sworn by the said **ALICE KIRII** as stated just after ground (g) of the application. It is therefore not clear whose affidavit is supporting the application. Technically the application is incompetent, and since it is opposed this court cannot unilaterally assume that the name of **ALICE KIRII** is an error and that the deponent is actually **HASMITA PATEL**.
4. The Respondent has opposed the application vide a Replying Affidavit sworn by **L. MUIRURI**

NGUGI dated 11<sup>th</sup> June 2014 with annexures thereto.

5. Pursuant to the foregoing, I do not intend to go into the merits of the application, so as to render the issues herein resjudiate once determined. While I strike the application herein for incompetence, I will nonetheless allow leave for the applicant to file another application if it so wishes.
6. In the upshot I make orders as follows:
  - a. **The Chamber Summons application herein dated 8<sup>th</sup> October 2013 is herewith struck out for being incompetent and unsupported by an affidavit of a known Deponent.**
  - b. **The Applicant shall be at liberty to bring a competent application of the same nature if need be.**
  - c. **The costs herein are for the Respondent.**

Orders accordingly.

Dated, Read and Delivered at NAIROBI this 3<sup>rd</sup> Day of October 2014.

**E.K.O OGOLA**

**JUDGE**

**Present :-**

Arwa for the Applicant

M/S. Kilei for the Respondent

Teresia – Court clerka