



**REPUBLIC OF KENYA**

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

**CIVIL DIVISION**

**MISCELLANEOUS APPLICATION NO. 321 OF 2011 (O.S)**

**IN THE MATTER OF THE ARBITRATION ACT, NO. 4 OF 1995**

**AND**

**IN THE MATTER OF AN ARBITRATION AGREEMENT**

**KENYA CANNERS SACCO SOCIETY LTD..... APPLICANT**

**VERSUS**

**CRAFT SILICON LTD..... RESPONDENT**

**FINAL RULING ON PRELIMINARY OBJECTION**

1. Further to the **preliminary ruling dated 11<sup>th</sup> and delivered on 14<sup>th</sup> June 2013**, I have since perused the very large **Arbitration Act 1996 of England**. I am afraid that I have not found in it anything that may enable this Court to assist the parties to resolve their dispute at this stage. I therefore have to make a final ruling on the preliminary objection raised by the Respondent to the **originating summons dated 26<sup>th</sup> July 2011** filed by the Applicant. One of the grounds for the preliminary objection was that this Court lacks jurisdiction to hear the originating summons or to grant the orders sought.

2. The main orders sought in the originating summons were -

- (i) That the court do direct the **Law Society of Kenya** or the **Chartered Institute of Arbitrators (Kenya Chapter)** to appoint an appropriate arbitrator to hear and determine the dispute between the parties.
- (ii) That a reasonable time for making the award by the arbitrator be fixed.

3. The arbitration clause contained in the contract between the parties provides as follows –

**“DISPUTE RESOLUTION**

**If the parties are unable to resolve any dispute resulting from this agreement**

by means of joint co-operation or discussion between the individuals directly involved with the execution of this agreement within 1(one) week after a dispute arises, or such extended period of time as the Parties may allow in writing, then such dispute shall be submitted to the most senior executives of the parties who shall endeavor to resolve this dispute within thirty (30) calendar days after it has been referred to them.

Should the dispute not be resolve in the aforesaid manner, then the dispute shall be determined by invoking arbitration procedures as per the United Kingdom Arbitration Act. The place of arbitration shall be Nairobi, Kenya.

The provisions of this clause constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions.”

4. Upon failure of the parties to resolve the dispute internally as provided, the dispute must be determined by invoking the arbitration procedures under the *Arbitration Act of England*, though ultimately the place of arbitration shall be in Nairobi, Kenya.

5. The parties by their own agreement have not reserved for the *High Court of Kenya* the power to enforce or to apply the English Arbitration Act to their dispute. It appears that they must resort to the *Courts of England* to apply the English Arbitration Act to their dispute, including the appointment of arbitrator.

6. In the circumstances I must uphold the preliminary objection raised by the Respondent. This Court lacks jurisdiction to hear and determine the originating summons dated 26<sup>th</sup> July 2011. The same is hereby struck out with costs to the Respondent. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 10<sup>TH</sup> DAY OF OCTOBER 2013**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF OCTOBER 2013**