



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**CIVIL CASE 434 OF 2009**

**KENYA AIRPORTS PARKING SERVICES LTD. .... 1<sup>ST</sup> PLAINTIFF**

**KAPS MUNICIPAL PARKING SERVICES LTD. .... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MUNICIPAL COUNCIL OF MOMBASA ..... DEFENDANT**

**RULING**

Notice of motion brought to court under **Section 3A, Civil Procedure Act** dated 29/6/09 seeking the transfer of this suit from High Court of Kenya at Nairobi to District Registry at Mombasa High Court on the grounds stated namely; the suit arises out of alleged agreement between the parties, first plaintiff and defendant.

The court has been moved for interim measures of protection under **Arbitration Act**. It is submitted that the matter falls under the provisions of **Arbitration Act 1995**. There is no dispute on the issue of referring the dispute to arbitration.

The powers of the High Court under the **Arbitration Act** is provided under **Section 6** being to deal with applications for stay of suits and referring the same to arbitration where it is appropriate. **Section 10** of the **Act** prohibits the court from dealing with matters covered by **Arbitration Act**. However, in addition with **Section 6** providing for stay, **Section 7** does empower the court to grant interim protection orders pending before or during or after arbitral proceedings such as injunction.

This suit is for the purpose of seeking the order for such protection measures. The application before court is for arguments not for calling evidence. No prejudice will be suffered by the respondent if the matter is dealt with here in Nairobi.

It is clear that when application is heard the matter will be placed in the hands of an arbitrator. I therefore, do not see merit in this application. The same is dismissed with costs.

Orders accordingly.

**DATED, SIGNED and DELIVERED** at Nairobi this 8<sup>th</sup> day of July 2009.

**JOYCE N. KHAMINWA**

**JUDGE**