



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Miscellaneous Case 742 of 2008

PINNACLE PROJECTS LTD. PLAINTIFF

VERSUS

IN THE MATTER OF ARBITRATION ACTDEFENDANT

RULING

Chamber Summons dated 17/6/09 brought under **Order Rule 1, Section 3A, Civil Procedure Act** and **Section 35, Arbitration Act 4 of 1995** see King orders that the ex parte proceedings and the orders of the court dated 5/5/09 be set aside.

The grounds upon which the application is based are written on the application. The supporting affidavit of Dickson Matu, the applicant, shows that on 5/5/09 proceedings were heard when one advocate, Mr. Watako, was holding brief for Mr. Otieno, advocate for plaintiff. The proceedings involved application for leave to appeal to Court of Appeal against order made in the High Court.

It is clear the matter is contentious since a previous application was argued between the parties and was struck out on "technicality". I agree with the applicant that there was an error in keeping the applicant out of the court. This matter arising out of **Arbitration Act** involves major issues and the proper procedure must be followed.

I allow application and grant orders sought. Costs shall be in the case.

Orders accordingly.

DATED, SIGNED and DELIVERED this 3rd day of November, 2009.

JOYCE N. KHAMINWA

JUDGE