



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NAIROBI

Civil Appeal 67 of 1996

**INTRA AFRICA ASSURANCE COMPANY LIMITED
APPELLANT**

AND

**PARKLANDS SERVICE STATION (K) LIMITED
.....RESPONDENT**

(Appeal from the Ruling of the High Court of Kenya at Nairobi (The Honourable Mr.

Justice A.G. Ringera) dated 20th September, 1994

IN

CIVIL CASE NO. 68 OF 1992)

JUDGMENT OF THE COURT

This is an appeal against the order of the superior court (A.G. Ringera, J.) in which he declined to stay proceedings in its Civil Case No. 6816 of 1992, upon an application by the appellant which had been joined in the suit as a third party. The learned judge held that the third party/appellant did not show that it was all along ready and willing to submit to arbitration in terms of an arbitration clause in a policy of insurance upon which the claim against the appellant was based.

The appellant's application before the superior court for stay of proceedings was expressed to be brought under s.6 of the Arbitration Act Cap 49 Laws of Kenya. The affidavit in support of the application states in paragraph 4 as follows:

“That this is a dispute which must be referred to arbitration under condition 13 of the policy.”

The learned judge of the superior court found as fact that the matter in dispute was a matter which ordinarily would have been referred. He also found that there was no earlier request made to the appellant to submit to arbitration. There was no evidence before him to the effect that the appellant had been called upon to submit to arbitration but declined so to do. The first and earliest opportunity the appellant had to raise the issue arbitration was in the suit. In the circumstances we are unable to appreciate why the learned judge of the superior court declined to stay the proceedings as had been requested in the application for stay.

We are satisfied that the appeal has merit and we allow it and order the claim against the appellant stayed. We award the costs of the appeal and of the stay application to the appellant.

Dated and delivered at Nairobi this 18th day of March, 1997.

R. O. KWACH

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

S. E. O. BOSIRE

.....

AG. JUDGE OF APPEAL

I certify that this is a true of the original.

DEPUTY REGISTRAR