

REPUBLIC OF KENYA

IN THE SUPREME COURT OF KENYA AT NAIROBI

(Coram: Maraga: CJ & President, Ojwang, Wanjala, Njoki & Lenaola, SCJJ)

APPLICATION NO. 15 OF 2016

—BETWEEN—

AIRTEL NETWORKS KENYA LIMITED.....APPLICANT

—AND—

NYUTU AGROVET LIMITED.....RESPONDENT

(Being an application to review the Ruling and Orders of the Court of Appeal in Nairobi (Visram, Azangalala & Sichale JJA) dated 17th June, 2016 in Civil Application No. Sup 3 of 2013 granting certification to appeal to the Supreme Court of Kenya against the Ruling and Orders made by the Court of Appeal at Nairobi (Karanja, Mwera, Musinga, M’Inoti and Mohamed JJA) delivered on 6th March, 2015 in Civil Appeal (Application) No. 61 of 2012)

RULING

1. **UPON PERUSING** the Originating Motion application dated 30th June, 2016 and filed on 1st July, 2016, which application is brought under Article 163 (5) of the Constitution; Rules 3(2), 4(5) and 24 (2) of the Supreme Court Rules; seeking a review of the Court of Appeal’s certification, allowing the respondent herein to file an appeal to this Court; **AND**

2. **UPON READING** the affidavit of Joy Nyaga dated 30th June, 2016, in support thereof, and the replying affidavit of Muchae Mathare dated 21st November, 2016, in opposition thereto; **WE HAVE CONSIDERED** the applicant’s case wherein it is contended that the intended appeal to the Supreme

Court does not raise matters of general public importance to warrant the intervention of the Supreme Court. The applicant further contends that there are no conflicting decisions of the Court of Appeal regarding the issue in question, such as would entitle the respondent to seek a final pronouncement by this Court.

3. The respondent opposes the application on grounds that, the Court of Appeal granted the certification, having determined that, there exists uncertainty regarding the jurisdiction of that Court, over appeals emanating from Section 35 of the Arbitration Act, which uncertainty can only be conclusively resolved by the Supreme Court. This issue, argues the respondent, transcends the particular interests of the parties to this cause, and has therefore, been appropriately certified by the Appellate Court.

4. **HAVING CONSIDERED THE APPLICATION**, by a unanimous decision of this Bench, we make the following Orders under Article 163 (5) of the Constitution, and Rule 24 of the Supreme Court Rules 2012 (as amended).

ORDERS	REASONS
<i>The Originating Motion dated 30th June, 2016 is hereby dismissed with costs.</i>	<i>(a) No compelling reasons have been presented to the Court as to warrant a review of the grant of certification by the Court of Appeal.</i> <i>(b) In granting the certification, the Court of Appeal was properly guided by the principles set out in Hermanus Phillipus Styn v. Giovanni Gneccchi-Ruscone [2013] eKLR</i>

DATED and **DELIVERED** at **NAIROBI** this 7th Day of December, 2018.

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D. K. MARAGA
CHIEF JUSTICE & PRESIDENT
OF THE SUPREME COURT

.....
J. B. OJWANG
JUSTICE OF THE SUPREME COURT

.....
S. C. WANJALA
JUSTICE OF THE SUPREME COURT

.....
N. S. NDUNGU
JUSTICE OF THE SUPREME COURT

.....
I. LENAOLA
JUSTICE OF THE SUPREME COURT

I certify that this is a
true copy of the original

REGISTRAR
SUPREME COURT OF KENYA

