



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

ADOPTION CAUSE NO. 6 OF 2017

MARY JANE NALIMA PLUTO.....APPLICANT

VERSUS

CHARLES SIMIYU CHONGANA.....1ST RESPONDENT

EVANS WANYONYI WASWA.....2ND RESPONDENT

RULING

This is a notice of motion dated 7.12.2017 where the applicant Mary Simiyu Nalima Pluto seeks the following order against the Respondents Charles Simiyu Chongana (1st Respondent) and Evans Wanyonyi Waswa (2nd Respondent).

a. That this honourable court be pleased to read and adopt the arbitration award hereto dated 6th January 2017 and hence be enforced accordingly.

b. Costs be as taxed in the award.

The grounds of the application are that:

a. That the parties herein referred their dispute to arbitration and jointly appointed Emmanuel W. Ouna to be their sole arbitrator in accordance with the Arbitration Act.

b. That they were heard and they came up with an award on agreed terms.

c. That the first Respondent made a down payment of Kshs 18,000 thousand but to date has failed to clear.

While perusing this file to make any ruling I noted that there were proceedings in respect of the application before Aroni J on 5.3.2018 as here under.

5.3.2018

Coram: Hon. Ali Aroni J

C/A: Wayongo

Mary Jane: Seeking to have the award adopted. I served both 1st Respondent – present.

1st respondent: I have paid about Kshs 22,000/-

Court: The arbitration is read and adopted... Order (a) and (b) granted.

ALI ARONI

JUDGE

There after a decree was issued on 11.5.2018 indicating:

DECREE

CLAIM FOR:

- a. The Honourable court be pleased to read and adopt the arbitration award hereto dated 6th January 2017 and hence be enforced accordingly.
- b. Costs be as taxed in the award.

This matter coming up this 5th day of March 2018 before Hon. ALI ARONI JUDGE, for hearing and adoption of an award dated 6th January 2017 arising from Tribunal Cause NO. 1 of 2017 in the Arbitration and Alternative Dispute Resolution by Hon. E.N Ouna ESQ ARBITRATION and in the presence of the Applicant and the 1st Respondent.

IT IS HEREBY DECREED/ORDERED THAT:

- a. The first Respondent to refund to the claimant a sum of Kshs 165,000.00 only within a period of 90 days from 6th January 2017.
- b. The second Respondent to refund to either the Applicant or the 1st Respondent a sum of Kshs 65,000.000 to make a total of Kshs 230,000 amount to be paid to the Applicant in total by the Respondents.
- c. Costs of this award, arbitrator, witnesses and other expenses taxed at Kshs 40,000 be shared among all parties.

Given under my hand and seal of this Honourable Court this 5th day of March 2018.

ALI ARONI

JUDGE

Mr. Kituyi for 2nd Respondent Evans Wanyonyi Waswa filed the application dated 28.5.2018 seeking the following orders.

- a. That there be temporary stay of execution of the attachment of the Applicant property pending haring and determination of this application inter-parties.
- b. That this honourable court be pleased to review, vary and/or set aside decree or any orders of Adoption dated 6th January 2017 and the decree and the same be declared illegal and null and void.

The application is supported by the affidavit of Evans Wanyonyi Waswa the applicant in which he depones that he never signed any arbitration agreement that he was never served with summons to appear before the arbitrator, nor did he participate in the proceeding and that he only came to learn of this matter when auctioneers visited his home on 22.5.2018 and proclaimed his property.

The appellatant filed an arbitration agreement dated 6.1.2019 signed by the claimant and respondent who has indicated the ID NO. as 9299949. Charles Simiyu Chongana. It is not signed by Evans Wanyonyi Waswa the 2nd Respondent. The 2nd Respondent was not therefore a party to the arbitration proceedings nor did he participate in the same. It was therefore an error for the arbitrator to make a finding that he is liable to pay the sum of Kshs 65,000 to either the applicant or 1st respondent. That being so I set aside the award of Kshs 65,000 against the 2nd Respondent Evans Wanyonyi Waswa. The applicant or 1st respondent are at liberty to seek redress from the 2nd respondent for the sum by other lawful means. Each party to bear its own costs.

Dated and Delivered at Bungoma this 12th day of February, 2021

S.N. RIECHI

JUDGE