



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 515 OF 2018

GHANIMA LIMITED.....APPELLANT/APPLICANT

VERSUS

MARTIN KARANJA WAMUTI.....1ST RESPONDENT

JACKLINE WANJIKU WANJAU.....2ND RESPONDENT

RULING

1. The appellant who was one of the defendants in a suit instituted by the respondent in Milimani CMCC No. 4443 of 2018 is aggrieved by the decision of the lower court in a ruling dated 26th September 2018 in which the trial court dismissed the appellant's chamber summons dated 23rd May 2018 which had sought stay of proceedings and reference of the dispute between the parties to arbitration.
2. The appellant filed an appeal to this court vide a memorandum of appeal dated 26th October 2018 in which it principally prayed for a reversal of the trial court's ruling on grounds that the trial court lacked jurisdiction to hear the dispute in view of the arbitration agreement executed by the parties.
3. Pending the hearing and determination of the appeal, the appellant (hereinafter the applicant) presented a Notice of Motion dated 26th October 2018 seeking stay of proceedings in the suit filed in the lower court. The motion is supported by the grounds stated on its face and the depositions in the supporting affidavit sworn on 20th March 2018 by *Manmit Jabbal*, the applicant's director.
4. It is contended on behalf of the applicant that if the order sought is not granted, it will suffer irreparable loss and great injustice as the respondents are likely to prosecute the suit to conclusion contrary to the arbitration agreement in which the parties bound themselves to refer any dispute arising between them under the sales agreement to arbitration; that the continuation of the proceedings in the lower court will render the appeal which has high chances of success nugatory and that any proceedings in the lower court will be a nullity in view of the provisions of *Sections 6 and 10 of the Arbitration Act*.
5. The application is opposed through a replying affidavit sworn on 22nd November 2018 by *Mr. Njoroge Wachira*, learned counsel for the respondents. The deponent denied the applicant's claim that the appeal has high chances of success and claimed that the same was in fact a non-starter. It was contended that the applicant has not demonstrated what loss or injustice it will suffer if the application was dismissed. In the respondents' view, the applicant does not stand to suffer any prejudice if the application was dismissed but they stood to suffer great prejudice if the application was allowed as their house would be sold as threatened in the defendant's letter dated 19th April 2018. The respondent further asserted that the trial court has jurisdiction to hear and determine the suit.
6. The application was argued orally before me on 27th November 2018. Learned counsel *Mr. Litoro* represented the applicant while learned counsel *Mr. Wachira* appeared for the respondents.
7. I have carefully considered the application, the affidavits on record and the annexures thereto as well as the rival submissions made on behalf of the parties.
8. In my view, the only issue that distills itself for my determination in this application is whether the applicant has demonstrated that sufficient cause exists to justify the grant of the order of stay of proceedings in the lower court as prayed.
9. I have read the agreement for sale of villa number 6 (C court) on Title No. Donyo Sabuk/Komarock Block 1/20775 which was executed by the applicant and both respondents on 23rd February 2016.

As correctly admitted by *Mr. Wachira* for the respondents in his submissions, clause 7 (4) of the agreement of sale contained an arbitration agreement in which the parties agreed to refer any dispute arising between them under the contract for resolution by an arbitrator.

Though at this stage I am not supposed to consider the merits or otherwise of the applicant's appeal, in view of the foregoing and considering the provisions of *Sections 6 and 10* of the *Arbitration Act* which are clearly applicable to the proceedings in the lower court, I find that *prima facie*, the applicant has demonstrated that its appeal has good chances of success.

10. Having found as I have above, I am of the view that the applicant has demonstrated sufficient cause for grant of the orders sought because if proceedings in the lower court are not stayed, nothing will stop the respondents from prosecuting the suit to conclusion thus rendering the applicants appeal nugatory and a mere academic exercise.

11. The respondents have claimed that if the application is allowed, they are going to be greatly prejudiced as their house will be sold as threatened in the letter dated 19th April 2018 authored by the applicant. I have scrutinized the said letter. In my view, the letter simply advises the respondents to comply with the terms of their lease agreement. The threat to re-enter and sell the house is only pegged to the respondent's alleged continued breach of the agreement such that if there was compliance, the threat to sell the house would cease to exist. The said threat has nothing to do with whether the application is allowed or dismissed. In the premises, the respondents' submissions that allowing the application will occasion them prejudice on grounds that their house is likely to be sold cannot be sustained.

12. Having taken everything into account, I find that the interests of justice will be better served if the application was allowed. I therefore find merit in the Notice of Motion dated 26th October 2018 and it is consequently allowed in terms of prayer 4 with the result that the proceedings in Milimani CMCC No. 4443 of 2018 are hereby stayed pending the hearing and determination of the appeal filed herein.

13. Costs of the application shall abide the outcome of the appeal.

It is so ordered.

DATED, DELIVERED and SIGNED at NAIROBI this 20th day of December, 2018.

C. W. GITHUA

JUDGE

In the presence of:

Miss. Nduta Kamau holding brief for Mr. Litoro for the applicant

No appearance for the respondents

Miss Kavata: Court Assistant