



REPUBLIC OF KENYA



**Mwangi v Ghillie Company Limited & 10 others (Environment & Land Case E218 of 2023) [2023] KEELC 22506 (KLR) (18 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22506 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E218 OF 2023  
EK WABWOTO, J  
DECEMBER 18, 2023**

**BETWEEN**

**CECILIA MWANGI ..... PLAINTIFF**

**AND**

**GHILLIE COMPANY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**DAVITA MANAGEMNT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**NASIR YUSUF ..... 3<sup>RD</sup> DEFENDANT**

**EVA BIEGON ..... 4<sup>TH</sup> DEFENDANT**

**FARIDA MOHAMMED ..... 5<sup>TH</sup> DEFENDANT**

**DAVIS MWANGOMA ..... 6<sup>TH</sup> DEFENDANT**

**SAMMY NZIVO ..... 7<sup>TH</sup> DEFENDANT**

**SOUD KHALFAN ..... 8<sup>TH</sup> DEFENDANT**

**MARY MWANGI ..... 9<sup>TH</sup> DEFENDANT**

**CYNTHIA OMINA ..... 10<sup>TH</sup> DEFENDANT**

**JASLEEN GILL ..... 11<sup>TH</sup> DEFENDANT**

**RULING**

1. A background of this suit is that parties have raised several contentious applications for determination. Pursuant to the court's directions, this ruling is in respect to the 1<sup>st</sup> defendant's chamber summons application dated July 3, 2023. The 1<sup>st</sup> defendant sought the following:

- i. That this honourable court has no jurisdiction to hear and determine this matter.



- ii. That the claim as filed offends clause 21 of the sale agreement dated July 4, 2019 which provides that any dispute should be resolved by way of arbitration.
  - iii. That the proceedings should be stayed and parties referred to arbitration.
  - iv. That costs of this application should be borne by the plaintiff.
2. I have considered the application, the respective written submissions and the authorities cited. The main issue for determination is whether the suit filed herein should be stayed and the matter referred to arbitration?
3. Section 6 of the Arbitration Act stipulates as follows:

“A court before which proceedings are brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than the time when that party enters appearance or otherwise acknowledges the claim against which the stay of proceedings is sought, stay the proceedings and refer the parties to arbitration unless it finds: -

- (a) That the arbitration agreement is null and void, inoperative or incapable of being performed; or
- (b) That there is not in fact any dispute between the parties with regard to the matters agreed to be referred to arbitration.

Proceedings before the court shall not be continued after an application under subsection (1) has been made and the matter remains undetermined. If the court declines to stay legal proceedings, any provision of the arbitration agreement to the effect that an award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings” [Emphasis mine]

4. The tenets for granting of stay of proceedings are well established in the case of Esmaj v Mistry Shamji Lalji & Co (1984) KLR, where the Court of Appeal considered the following: -
- a) The court is not bound to grant stay but has discretion to grant or not to grant.
  - b) The discretion to grant should not be exercised when strong cause for doing so is shown.
  - c) The burden of proving such strong cause is on the plaintiff.
  - d) In exercising discretion, the court should take into account the circumstances of the particular case.
  - e) A mere balance of convenience is not enough.
5. This Court has considered that although the use of “shall” places a mandatory action for reference to arbitration and consequent stay of proceedings, this is pegged upon a party’s swift action to present the given application. In the case Mt Kenya University v Step Up Holding (K) Ltd [2018] eKLR , the Court of Appeal held that:

“All that an applicant for a stay of proceedings under section 6 (1) of the Arbitration Act of 1995 is obliged to do is to bring his application promptly. The court will then be obligated to consider the threshold things:



- (a) Whether the applicant has taken any step in the proceedings other than the steps allowed by the section;
  - (b) Whether there are any legal impediments on the validity, operation or performance of the arbitration agreement; and
  - (c) Whether the suit intended concerned a matter agreed to be referred to arbitration...”
5. My perusal of Clause 21 of the sale agreement dated 4<sup>h</sup> July 2019, outlines arbitration as a mechanism to resolve “any dispute, controversy or claim arising out of or in connection with the sale and purchase of the said property”. To my mind, this confirms that the parties intended to be bound by the Agreement in its entirety and that included adherence to the out of court settlement process.
6. At this juncture, the Court is duty bound to down its tools and allow parties to exhaust remedies availed by the sale agreement. In view of the foregoing, the court hereby finds that the chamber summons dated July 3, 2023 is merited and the same is allowed under the following terms:
  - a. The proceedings in this suit are hereby stayed and the parties referred to arbitration under the terms of the agreement dated July 4, 2019.
  - b. Each party to bear own costs of the application.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF DECEMBER 2023.**

**E. K. WABWOTO**

**JUDGE**

