



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ELC APPEAL NO. 64 OF 2012

GEORGE THURANIRA M'TABARI.....1ST APPELLANT
GIDEON NDWARU ITHIKUA.....2ND APPELLANT
STEPHEN MIRITI.....3RD APPELLANT

VERSUS

KAGAENE COMMUNITY WATER PROJECT

(suing through its officials; Albert Pius Mutea – chairman,

Samuel Ntoiti – Secretary & Philip Kairithia – Treasurer.....RESPONDENT

JUDGMENT

This suit was an appeal from the ruling/order of Honourable B. Ochieng, Senior Principal Magistrate dated 26th June, 2012 in Tigania SRMCC No. 31 of 2012 (KAGAENE COMMUNITY WATER PROJECT (suing through its officials: ALBERT PIUS MUTEA – CHAIRMAN, SAMUEL NTOITI – SECRETARY and PHILIP KAIRITHIA – TREASURER VERSUS GEORGE THURANIRA M'TABARI, GIDEON NDWARU ITHIKUA AND STEPHEN MIRITI)

On 20.6.2013, Miss Waithaka, holding brief for the firm of Carlpeters Mbaabu & Co, Advocates and Mr. Muriithi holding brief for the firm of Kiautha Arithi & Co. Advocates, presented a consent dated 27.2.2013 and filed on 13.3.2013 to the Court. They prayed that the terms of consent be adopted as an order of the Court. The consent reads as follows:

“By consent of all parties;

that this matter be marked as settled on the following terms;

1. That it is hereby recognized that Kagaene Community Water Project consists of two major lines to wit Kaliati Branch line and Njia branch line and one minor Kamaruki line.
2. That each of the three said water branches up to 30th August 2013 be run by the following committee members to wit;
3. (a) **KALIATI BRANCH**

- GEORGE THURANIRA M'TABARI - Chairman

- GEDEON NDWARU ITHIKUA - Secretary
- PHILIP KAIRITHIA - V/Chairman
- STELLA NKATHA - Treasurer
- FLORENCE KINYA - V/Secretary
- SALESIO MURIUKI - Committee Member
- JOHN MURURU - Committee Member
- IBRAHIM GITONGA - Committee Member
- JULIUS MUTUA - Committee Member

(b) **NJIA BRANCH**

- ZAKAYO KABERIA - Chairman
- ALBERT PIUS MUTEA - Committee Member
- SAMUEL NTOITI - V/Secretary
- STEPHEN M. MIRITI - Treasurer
- JULIUS KATHANJE - V/Chairman
- SHADRACK KIAMBI - Secretary
- MARTHA NKATHA - Committee member
- TRIPHOSA KALINGU - Committee member
- PETER GIKURI - Committee member

3. That up to 30th August, 2013 the entire Kagaene Community Water Project to be ran by a representative board made up as follows:

NJIA

- ZAKAYO KABERIA
- ALBERT PIUS MUTEA
- STEPHEN M. MIRITI
- SAMUEL NTOITI

KALIATI

- GEORGE THURANIRA M'TABARI
- GIDEON NDWARU ITHIKUA
- PHILIP KAIRITHIA
- STELLA NKATHA

KAMARUKI

- JOSEPH THARIMBU

4. THAT the Kagaene community Water Project already existing Equity Bank Meru Branch Account No. 0140190989921 retain the registered signatories thereto namely ALBERT PIUS MUTEA, SAMUEL NTOITI LIBURU and PHILIP KAIRITHIA but with GEORGE THURANIRA

- M'TABARI ID NO.2364953 and GEDION NDWARU ITHIKUA ID NO.8859363 as additional compulsory signatories thereto. This order be served upon the Equity Bank Meru Branch Manager for compliance
5. THAT effective 1st September 2013 the members of Kagaene Community Water Project be at liberty to conduct a full election.
 6. THAT it is hereby agreed that the water reservoir (control chamber) situate in Kagaene area within Mbeu location has already been opened for free and continuous flow of water to all the members of Kagaene Community Water Project
 7. THAT both this matter and TIGANIA PMCC No. 31 of 2012 be marked as settled with each party bearing their own costs.

WE CONSENT”.

ALBERT PIPUS MUTEA

ID NO.9908838

SAMUEL NTOITI LIBURU

ID NO. 12496611

PHILIP KAIRITHIA

ID NO. 2369409

GEORGE THURANIRA M'TABARI

ID NO. 2364952

GIDEON NDWARU ITHIKUA

ID NO. 8859363

STEPHEN B. MIRITI

ID NO.16120720

FOR: KIAUTHA ARITHI & CO.

ADVOCATES FOR THE APPELLANTS

FOR: CARLPETERS MBAABU & CO.

ADVOCATES FOR THE RESPONDENTS

In adopting the consent as an order of the court I take cognizance of the Case of **Hiren V Kassam (EACA), 19**, which quoted and approved the following passage from set of judgments and orders, 7th edition Volume 1 Page 124:

“Prima facie, any order made in in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them.... and cannot be varied or discharged unless obtained by fraud or Collusion, or by an agreement contrary to the police of Court..... or if consent was given without sufficient material facts, or in misapprehension or ignorance of material facts or in general for any reason which would enable to set aside an agreement between the parties”.

The consent herein is signed by the litigants and by their advocates. I find that the consent satisfies all the conditions which would not invite a Court to interfere with its terms at all.

As was held in the English case of HUDDSFIELD BANKING CO LTD Vs. HENRY LISTER AND SON LTD (1895) 2 CH d.p. 273 BY Lindley, j at 280, an agreement that cannot be invalidated is good. If it can be invalidated, it is bad. This consent is good.

In the circumstances, I adopt the consent as an order of this Court. For avoidance of doubt, this suit and TIGANIA PMCC NO.31 OF 2012 are marked as settled.

It is so ordered.

Delivered and Signed in Open Court at Meru this 20th day of June, 2013 in the presence of:

Cc. Daniel

Miss Waithaka h/b Carl Peters Mbaabu for Respondents

Atheru for Appellants.

P. M. NJOROGE

JUDGE