



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MACHAKOS**  
**(LAND AND ENVIRONMENTAL DIVISION)**

**CIVIL CASE NO. ELC 366 OF 2012**

1. VINYA WA AKA GROUP
2. VINYA WA AKA INVESTMENT COMPANY LTD
3. JANE WANZA MUTINDA
4. TERESIA MUTINDA
5. JOYCE NTHENYA KIITI
6. NDUNGE KIITI
7. RHODA MUENI MUSYOKA
8. FLORENCE NTHAMBI MUTHUSI
9. DOLLY WANZA KIVUVANA
10. RUTH KAMENGELE WAKI
11. LOIS MUTANY'A WAMBUA
12. FLORENCE MWIKALI KIITI
13. ALICE MANG'ELI MBINDU
14. FLORA NDUKU MUTISO
15. RUTH NDANU GICHOHI
16. DORIS MUTINDA KIOKO
17. CHRISTINE M WASANA
18. ANCHOR BUILDING TECHNOLOGIES LTD. .... PLAINTIFFS/RESPONDENTS

**VERSUS**

1. ENSI INVESTMENTS LIMITED
2. EDENITE GARDENS MANAGEMENT LTD. .... DEFENDANTS/APPLICANTS

**RULING**

1. The Notice of Motion dated 29/8/12 seeks the following orders:-
  1. (Spent).
  2. (Spent).
  3. **THAT, the Honourable court be pleased pending the hearing and determination of this application to issue an interim injunction against the Plaintiffs/Respondents, their agents, servants and/or employees from participating, taking part, producing witnesses, documents and/or any other evidence and/or being represented by counsel and/or any other person before Mr P. Mwaniki Gachoka the purported appointed sole arbitrator.**
  4. **THAT, the Honourable court be pleased to interpret and give effect of the correct and appropriate meaning of its ruling of 7<sup>th</sup> August 2013 in relation to the Arbitration Clause.**
  5. **THAT, the purported appointment of Mr. P. Mwaniki Gachoka by the Chairman of the Chartered Institute of Arbitrators (Kenya Branch) be declared null and void.**

6. **THAT, the Honourable court do make such directions and/or orders as it deem fit in the circumstances.**
  7. **THAT, the costs of this application be provided for.”**
2. The application is based on the following grounds:-
- a. **The Plaintiffs/Respondents have unilaterally and without involving the Defendants/Applicants caused the appointment of Mr. P. Mwaniki Gachoka as a sole arbitrator.**
  - b. **The purported appointment violates the clear terms of the Arbitration Clause.**
  - c. **The purported appointment is contrary to the ruling delivered by the Honourable court on 7<sup>th</sup> August 2013.**
  - d. **The purported appointment is null and void.**
  - e. **The Plaintiffs/Respondents are in contempt of court.**
  - f. **The Plaintiffs/Respondents have no respect of the authority and power of the Honourable court.**
  - g. **The Defendants/Applicants were excluded from participation as required by the Arbitration Clause.**
  - h. **The Defendants/Applicants have suffered prejudice and are likely further to suffer loss and damage.**
3. The application is supported by the affidavit of **Harun Osoro Nyamboki** sworn on 29/8/2012.
4. There was no reply to the application.
5. The Ruling by the court dated 7/8/13 allowed prayer No. 2 of the application dated 20/9/2012 and restrained the Defendants by way of injunction from alienating, selling, transferring, developing, allocating, sub-dividing or in any other manner interfering or dealing with the property known as **L.R. No. Mavoko Town Block 3/2359** and or its sub-division known as **L.R. Numbers 13175 to 13451**.
6. Prayer No. 3 of the application dated 20/9/2012 which sought an order that this court do appoint a sole arbitrator in this matter was not allowed. The court left it to the parties to abide by their own agreement which contains an arbitration clause. The court did not add or subtract anything from the said agreement and cannot now purport to midwife the arbitration process by issuing further orders and/or directions.
7. Consequently, I only allow prayer No. 4 of the application in the terms stated above. Costs in cause.

**B. THURANIRA JADEN**

**JUDGE**

**Dated and delivered at Machakos this 25<sup>th</sup> day of September 2013.**

**B. THURANIRA JADEN**

**JUDGE**