



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**MISC. CIVIL APPLICATION NO.93 OF 2011**

**COUNTY COUNCIL OF TRANSMARA ..... APPLICANT**

**VERSUS**

**COUNTY COUNCIL OF NAROK .....RESPONDENT**

**JUDGMENT**

1. The ex-parte chamber summons dated 5<sup>th</sup> August 2011 seeks the following orders:-

1. This application be heard ex parte.

2. The award of the Minister for Local Government dated 9<sup>th</sup> May 2004 be adopted as judgment of this court.

3. That the Respondent be granted leave to enforce the award made on 9<sup>th</sup> February 2004 by the Arbitrator herein, Minister for Local Government as a decree of this court.

4. That the cost of this application be provided for and all expenses as incidental to the enforcement of the award.

2. The application which is brought under **section 36** of the **Arbitration Act** and **Rule 6** of the **Arbitration Rules 1997, section 256** of the **Local Government Act** and all other enabling provisions of the law is supported by the following grounds:-

a) The Minister of Local Government arbitrated on the dispute between the parties herein and made a finding to the effect *inter alia* that:-

i. In view of the fact that Narok County Council subdivided and sold Olkeri Shamba, valued at Kshs.12 million, Narok County Council should pay Transmara County Council a sum of Kshs.12 million. This amount should be paid within a period of six (6) years from the date of the report at a figure of Kshs.2 million every year.

ii. Narok County Council pays Transmara County Council Kshs.2,982,867 being share of revenue collected during the transition period. This amount should be paid within a period of Two (2) years effective from the date of the report at a figure of Kshs.2 million every year.

b) The award was given on the 9<sup>th</sup> day of February, 2004.

c) That application to set aside the said award has never been lodged as provided under section 35 of the Arbitration Act as read with section 256 of the Local Government Act.

d) That the award has been duly filed in this cause.

e) Any party may apply ex parte by summons for leave to enforce the award as decree in accordance with Rule 6 of Arbitration Rules 1997.

3. There is also the Supporting Affidavit sworn by Samwel Kerosi Ondieki, advocate for the applicant. The deponent reiterates the averments on the face of the application and contends that the application is merited because no application to set aside the award made by the minister on 9<sup>th</sup> February 2004 has been made pursuant to **section 35** of the **Arbitration Act**. The deponent prays for the orders

sought in order to give effect to the Minister's award and to recognize and enforce the said award.

4. The applicant filed a Supplementary Affidavit through its counsel, Samwel Kerosi Ondieki on 7<sup>th</sup> October 2011. In the Supplementary Affidavit the deponent says that the dispute herein was arbitrated upon by the late Hon. Karisa Maitha, the then Minister for Local Government on the 9<sup>th</sup> February 2004. The original award is part of the Supplementary Affidavit.

5. There is no reply to the application, by way of either Replying Affidavit or Grounds of Opposition.

6. Briefly, the facts of this matter are that through a Gazette Notice No.2864 of 2<sup>nd</sup> May 2000, the Minister for Local Government, by the powers conferred upon him under **sections 269 and 270** of the **Local Government Act, Cap 265** and also vide the order of this court in **HCCC No. 17B of 1994**, appointed a committee to advise the Minister on succession of rights and liabilities for all local authorities in the country. The committee completed its work for the county councils of Transmara and Narok, consequent upon which the two councils discussed the most equitable distribution of the assets and liabilities. The assets included a number of motor vehicles and various immovable properties, including lodges. The councils did not agree on how to share out the assets and liabilities despite protracted negotiations, save on motor vehicles.

7. As per the minister's report, Transmara County Council had the following vehicles transferred to it:-

- Pajero – Registration No. KWE 531
- Hilux – Registration No. KAB 055Q
- T/Cruiser – Registration No.KAB 262Q
- L/Rover 109 – Registration No. KUL 042
- Grader – Registration No.KAB 026Q
- Case/Tractor – Registration No. KAB 251

- Trailer – Registration No. ZB 3010
  
- M/Bike – Registration No. KUV 952
  
- M/Bike – Registration No. KUV 929

8. Regarding the Olkeri Shamba, which is registered as **Narok/C15/Narok/Olkeri** and measuring approximately 240 acres valued at Kshs.12 million, the Minister found that the same had been subdivided and sold by Narok County Council. The Minister directed Narok County Council to pay Transmara County Council a sum of Kshs.12 million within a period of six (6) years from 9<sup>th</sup> February 2004 at the rate of Kshs.2 million a year.

9. The minister shared out the lodges as follows: Mara Serena Lodge to Transmara County Council and Keekrok Lodge to Narok County Council.

10. As to finances (funds) collected within the period of 14<sup>th</sup> August 1994 to June 1996, distribution was directed at 32% for Transmara and 68% for Narok County Council but after reconciliation of the accounts, Narok County Council was found to be net debtor to Transmara County Council to the tune of Kshs.2,982,867/= being revenue collected during the transition period.

11. **Section 256** of the **Local Government Act** provides that –

**“256. Where any matter is by this Act directed to be determined**

**by arbitration, such matter shall, except as may be otherwise provided be determined by arbitration in accordance with the Arbitration Act.”**

12. After carefully considering the application and the submissions made by counsel for the ex-parte applicant, and also after carefully considering the law, and there being no opposition to the said application, I am persuaded that the application has merit. Under **section 35** of the **Arbitration Act**, either party dissatisfied with the award should have applied to have the award set aside within the times stipulated under **section 35 (3)** thereof, namely within 3 months from the date on which the party making that application had received the arbitral award, or if a request had been made under **section 34** from the

date on which that request had been disposed of by the arbitral award.

13. From the facts that have been placed before this court, there has been neither request nor application as envisaged by the provisions of **sections 34 and 35** of the **Arbitration Act, Cap 49 Laws of Kenya**.

14. In the circumstances of this case, I hereby allow the chamber summons dated 5<sup>th</sup> August 2011 in terms of prayers 2 and 3 thereof namely:-

(a) the award of the Minister for Local Government dated on 9<sup>th</sup> May 2004 be and is hereby adopted as a judgment of this court.

(b) the applicant be and is hereby granted leave to enforce the award made on 9<sup>th</sup> February 2004 by the Arbitrator herein, namely the Minister for Local Government, as a decree of this court.

15. Costs of this application shall be in the cause.

16. It is so ordered.

Dated and delivered at Kisii this 22<sup>nd</sup> day of March, 2012

**RUTH NEKOYE SITATI**

**JUDGE.**

In the presence of:

Mr. Kerosi Ondieki (absent) for Applicant

N/A for Respondent

Mr. Kasera - Court Clerk

**RUTH NEKOYE SITATI**

**JUDGE.**