



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Case 658 of 2010

FRANCIS A. DJIRACKOR1ST PLAINTIFF

JOSEPHINE DJIRACKOR.....2ND PLAINTIFF

VERSUS

SPEEDWAY INVESTMENTS LTD1ST DEFENDANT

STANBIC BANK LTD.....2ND DEFENDANT

RULING

The Applicants herein seek an order for a temporary injunction restraining the Defendants from dealing with the suit premises being **A.6 Block A** on **LR.330/667** pending arbitration between the Applicants and the 1st Respondent.

The application is dated 30th September, 2010 and brought under Order XXXIX Rules 1, 2 and 9 of the **Old Civil Procedure Rules, Section 3A** of the **Civil Procedure Act** and **Section 7** of the **Arbitration Act**. It is based principally on the ground that after paying the purchase price for the property, the Applicants realized that there was material non-disclosure by the 1st Respondent while entering into the sale agreement. In particular, the agreement drawn by the 1st Defendant’s lawyers did not disclose that the 2nd Respondent was mandatorily to consent to the agreement. Secondly, the 1st Respondent did not disclose that any deposits it was to receive were to be paid into an escrow account but instead received deposits in a different bank account.

The Respondents raise issues regarding the validity of the sale agreement on the ground of, inter alia, non registration. In my view, those issues do not cloud clause 16 of the agreement for sale between the Applicants and the 1st Respondent. It reads as follows-

“All disputes and questions whatsoever which shall arise between the parties hereto touching this agreement or relating to the rights and liabilities of either party hereto shall be referred to the decision of a single Arbitrator who shall be an advocate of not less than 20 years standing to be appointed by the chairman for the time being of the Law Society of Kenya in accordance with the provisions of the Arbitration Act of 1995 or any Act amending or replacing the same. The decision of such Arbitrator shall be final conclusive and binding on the parties.”

I think that it will be fair and proper to refer this matter to Arbitration in terms of the accord entered into between the parties. For that purpose, it is also prudent to grant an injunction pending the completion of that process. I accordingly make the following orders-

- (a) This matter be and is hereby referred to arbitration in terms of clause 16 of the agreement dated 30th March, between the Applicants and the 1st Respondent.
- (b) A temporary injunction is hereby granted in terms of prayer 3 of the application by Chamber Summons dated 30th September, 2010.
- (c) Costs in the cause.

L. NJAGI
JUDGE

DATED and DELIVERED in NAIROBI this 12th day of September, 2012.

ODUNGA
JUDGE