



REPUBLIC OF KENYA



**KENYA LAW**  
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**Sugiyama v Ng'ang'a & 3 others; Sidian Bank (Interested Party) (Environment & Land Case E079 of 2021) [2023] KEELC 500 (KLR) (6 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 500 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**  
**ENVIRONMENT & LAND CASE E079 OF 2021**  
**MN GICHERU, J**  
**FEBRUARY 6, 2023**

**BETWEEN**

**KEIKO SUGIYAMA ..... PLAINTIFF**

**AND**

**PATRICK KAMAU NG'ANG'A ..... 1<sup>ST</sup> DEFENDANT**

**JAMES KIMANI GITHONGO ..... 2<sup>ND</sup> DEFENDANT**

**LUCY WANGARI NJENGA ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR, KAJIADO ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**SIDIAN BANK ..... INTERESTED PARTY**

**RULING**

1. This ruling is on the chamber summons dated December 20, 2021. The summons which is filed by the first and second defendants is brought under article 159 (2) (C) of the *constitution* of Kenya, section 20 of the *Environment and Land Court Act*, sections 1A, 1B and 3A of the *Civil Procedure Act*, sections 6(1) and (2) of the *Arbitration Act*, rule 2 of the *Arbitration Rules, 1997* and all other enabling provisions of the law.
2. The summons seeks four orders as follows.
  - a. Referral of the dispute to an arbitrator for settlement as per the terms of the agreement entered into between the parties.
  - b. Stay of this suit pending the decision of the arbitrator.
  - c. Costs of this application to be awarded to the first and second defendants against the plaintiff.



- d. Any other order the court may deem necessary in the interest of justice.
3. The summons is supported by fourteen (14) grounds, an affidavit sworn by Patrick Kamau Ng'ang'a, the first plaintiff, and one annexure which is a copy of the purported agreement between the parties.
  4. The gist of the above material is the plaintiff and the first defendant entered into an agreement for the sale of LR Kajiado/Kitengela/2765. Clause 13 of the said agreement provided that any dispute between the parties which could not be resolved amicably should be referred to arbitration. It is also deposed by the two defendants that they have not filed any pleadings prior to the filing of this application which has been filed simultaneously with the memorandum of appearance. They have not therefore acceded to the jurisdiction of this court to hear and determine this case.
  5. The application is opposed by the plaintiff who has filed a replying affidavit dated 15/7/2022 and seven (7) grounds of opposition of the same date.

In summary, the plaintiff deposes that the agreement is not dated, not signed and it is between parties who are different from the parties in this suit.

Secondly, the principle of separate legal entity estops the applicant from connection and interfacing themselves with Beacon Technologies Ltd, which is not a party in this suit.

Other grounds are absence of privity of contract between the parties, lack of an arbitration agreement among others which are all on record.

6. Council for the parties were to file and exchange written submissions by 15/1/2023. There were no submissions filed within or even outside the set deadline. I am writing this ruling in early February 2023, without the benefit of the said submissions.
7. I have carefully considered the application dated December 20, 2021 in its entirety including the affidavits, grounds, and the annexure. I find that there are only two issues to be decided in the application.
  - i. Whether there is a valid arbitration agreement between the parties.
  - ii. Whether the court should otherwise refer the matter to settlement out of court even in the absence of a valid arbitration agreement between the parties.
8. On the first issue, I find that there is no valid arbitration agreement between the parties. The copy of agreement exhibited by both the first defendant and the plaintiff is undated and unsigned by either of them.

Secondly, the parties in the undated and unsigned copy of agreement are not similar to the parties in this suit. Only the plaintiff in this suit is common in the agreement and the suit. The first defendant is nowhere in the said agreement. The same with the second defendant.

Since the unsigned and undated agreement is invalid, the clause on arbitration is also invalid.

9. On the second issue, even though the court is commanded by article 159 (2) (c) of the *constitution* to promote arbitration and other out of court dispute resolution mechanisms, in this case, the plaintiff does not seem agreeable and amenable to such out of court settlement. Unless and until the plaintiff becomes amenable, the suit will proceed in this court wholly.

For the above stated reasons, I dismiss the chambers summons dated December 20, 2021 with costs to the plaintiff.

It is so ordered.



DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2023.

M.N. GICHERU

JUDGE

