



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 621 OF 2013

LAKE NAIVASHA CRESCENT CAMP LIMITED.....PLAINTIFF

VERSUS

WAGICIENGO HOLDINGS LIMITED.....1ST DEFENDANT

ANASTACIA WAGICIENGO.....2ND DEFENDANT

RULING

(Application for adoption of an arbitration award; no contest on the award; the award

adopted as the judgment of the court and a decree may accordingly issue)

1. The application before me is that dated 8 October 2015 filed by the plaintiff. The application is brought pursuant to the provisions of Section 36 of the Arbitration Act, 1995 and Rule 9 of the Arbitration Rules, 1997. The application seeks an order that there be judgment entered in favour of the plaintiff in terms of an arbitration award dated 30 September 2015. The application is supported by the affidavit of one Samuel Warugu Kimotho, a director of the applicant. I have not seen anything filed to oppose the motion despite counsel for the respondent being duly served.

2. To put matters into context, this suit was commenced through a plaint which was filed on 9 December 2013 by the applicant against Wagiciengo Holdings Limited and Anastacia Wariara Wagiciengo. It was pleaded in the plaint that the two defendants/respondents were the registered owners of the land parcels registered as LR Nos. 396/9 and 396/10 situated in Naivasha, Nakuru County. The plaintiff averred that on 2 December 2001, it entered into a leasehold agreement with the respondents for a fixed term of 15 years with effect from 1 January 2002, until 31 December 2027 (sic) for purposes of erecting a tented camp and restaurant. Pursuant thereto, the applicant averred to have made massive investments to the tune of Kshs. 68,900,000/= and also marketed the venture. It also averred to have been up to date with its rent payments save for some difficulties encountered early in the year 2013. On 4 December 2013, the respondents served upon the applicant a notice dated 25 November 2013, terminating the lease on account of arrears of Kshs. 4,132,759/=. It is this claim which made the applicant come to court as it was its view that the rent owing was Kshs. 2,000,000/=.

3. The matter was referred to arbitration and the suit held in abeyance.

4. In this application, the applicant states that on 2 October 2015, the arbitrator made his award and delivered it to the parties. It is deposed in the supporting affidavit, that there has been no challenge to the award, hence the desire of the applicant to have it recognized as judgment of the court. Despite being served, the respondents have not filed anything to contest the application and I have nothing before me that would make me disbelieve the applicant.

5. I therefore enter judgment in terms of the award and a decree may accordingly issue for enforcement.

6. There shall be no order as to the costs of this suit as the arbitrator held that costs be shared equally and indeed the parties equally shared the costs of arbitration.

7. Orders accordingly.

Dated, signed and delivered in open court at Nakuru 10TH day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of : -

No appearance on the part of M/s Oyugi & Co. for the applicant.

No appearance on the part of M/s E. Wafula & Associates for the respondents.

Court Assistants: Nelima Janepher /Patrick Kemboi.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU