



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC PETITION NO.E021 OF 2020

MUCHIRI KARANJA.....PETITIONER

- VERSUS -

KENYA RAILWAYS CORPORATION.....RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated 3rd November 2020 in which the Respondent/Applicant seeks stay of proceeding herein and reference to arbitration. The Applicant had entered into a lease agreement with the Petitioner/Respondent in which the Applicant leased to the Respondent its former Mechanical Handling Yard (part E) off Exchange Lane for a period of 9 years with effect from 1st September 2012.
2. On 10th August 2020 before the expiry of the term, the Applicant issued a termination notice on the ground that the leased area was required for Nairobi Commuter Rail and Nairobi Railway City Development purposes. The Respondent was required to hand over the leased premises immediately.
3. The Respondent did not hand over the premises where he was operating a restaurant. On 11th August 2020, the Applicant moved into the premises and forcefully evicted the Respondent. This is what prompted the Respondent to file a constitutional petition in which he sought for compensation in the sum of Kshs.10,000,000/= together with exemplary damages.
4. The Applicant entered appearance on 28th October 2020 and on 3rd November 2020 made the present application. The Applicant contends that clause 21.3 of the lease agreement provided that if a dispute arose between the parties which dispute could not be resolved amicably, the dispute was to be referred to a single arbitrator in accordance with the provisions of the Arbitration Act 1995 or such arbitrator to be appointed in default of agreement by the Chairman of the Law Society of Kenya.
5. The Applicant contends that a dispute has arisen and that as the parties have failed to amicably resolve it, the proceedings herein should be stayed and the dispute referred to arbitration.
6. The Respondent has opposed the Applicant's application based on grounds of opposition dated 14th January 2021. The Respondent contends that the lease which the parties signed was not stamped or registered and that therefore it is of no evidential value. The Respondent contends that there is nothing to be taken to arbitration as the dispute is not on termination but the forceful eviction.
7. The Respondent further argues that the Applicant cannot benefit from its own wrong doing because it received legal fees for stamping and registering the lease but that it did not either stamp or register the lease.
8. The parties were directed to file written submissions. The Applicant filed its submissions dated 11th June 2021. The Respondent filed his submissions dated 23rd June 2021. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions filed by the parties. The only issue for determination is whether there is a clause in the lease which calls for the matter to be referred to arbitration.
9. In the case of **UAP Provincial Insurance Company Ltd Vs Michael John Beckett (2013) eKLR** the Court of Appeal held that where a court finds that there is a dispute and that such dispute is within the scope of the arbitration agreement then the court must refer the dispute to arbitration.
10. In the instant case, the lease which the parties signed provided that any dispute arising which cannot be amicably solved shall be referred to arbitration. Clause 21.3 of the lease provided for reference to arbitration. The parties have failed to amicably settle the dispute. It is

therefore clear that this is a matter which can only be solved through arbitration.

11. The Applicant complied with the requirements of section 6 of the Arbitration Act which requires that where a party desires stay of proceedings and referral to arbitration, the Application has to be made soon after appearance and before a defence is filed.

12. The fact that the lease was not stamped and registered does not preclude the lease operating as a contract between the parties. As there is a clause in the said lease for reference to arbitration, I find that this is a matter which should be referred to arbitration.

13. I therefore allow the Applicant's application dated 3rd November 2020 with result that the proceedings herein are stayed and this matter is referred to arbitration. The parties should agree on a single arbitrator within 45 days failing which, the President of the law Society shall appoint an arbitrator for the parties. The costs of this application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 21ST DAY OF OCTOBER, 2021

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

Mr Dachy for Applicant

Court Assistant: Mercy

E.O. OBAGA

JUDGE