



REPUBLIC OF KENYA



**Roack Consult Limited v Agingu & another (Civil Suit 432 of 2016)
[2023] KEHC 18494 (KLR) (Commercial and Tax) (12 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 18494 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT 432 OF 2016
JWW MONG'ARE, J
JUNE 12, 2023**

BETWEEN

ROACK CONSULT LIMITED PLAINTIFF

AND

WILLIAM OWEKE AGINGU 1ST DEFENDANT

VICTORIA LUXURY VILLA LIMITED 2ND DEFENDANT

RULING

1. When this matter came up for hearing on March 23, 2023 the Defendant raised preliminary points of objection submitting that by a ruling delivered by this court on April 30, 2018, the court ordered that prayers A & B of the Plaintiff be referred to arbitration within 30 days from the date of that ruling. Further Counsel submitted that prayers C, D and E of the Plaintiff relate to matters affecting title and ownership of land and therefore this court lacked the have the jurisdiction to entertain the same. The Defendant urged the court to go through the aforementioned ruling and the pleadings in order to determine if the court has jurisdiction.
2. On his part, Counsel for the Plaintiff argued that the Defendant had already filed a defence, list of documents and the parties have gone through the case management procedures in this case and therefore acknowledging the jurisdiction of this court to hear and determine the issues between the parties. In response on the issue of whether this court had the jurisdiction to determine issues of land as raised under prayer C, D, E of the Plaintiff, the Plaintiff's counsel argued that by dint of the ruling dated April 30, 2018, the court directed that those prayers could be heard by this court.
3. The Plaintiff's counsel therefore argued that it was late for the Defendant to raise issues of jurisdiction. Further, he opined that the question that the court must answer is whether it has jurisdiction to determine this suit.



4. A perusal of the said ruling dated April 30, 2018 states in part as follows at Paragraph 36:

“...the prayers sought for under paragraph (a) and (b) should be referred to arbitration in accordance with the Arbitral Clause. As such, any proceedings in relation to the same, shall be and is hereby stayed pending the reference of the matter to Arbitration within 30 days of this order.”
5. The Plaintiff in the Plaint dated October 24, 2016 seeks under prayers (a) and (b) special damages of Ksh 663,226.40/- and special damages of Kshs 6,451,309.86/- for the losses incurred due to the breach of contract between the Plaintiff and the 1st Defendant, respectively. The said contract, subject matter of this suit between the parties contained an arbitral clause and that is why the court directed that disputes emerging from its breach ought to be resolved through arbitration.
6. I am therefore inclined to agree with the Defendant that all matters in relation to prayers (a) and (b) of the plaint are to be strictly solved through arbitration, as previously ordered by the court, despite the fact that parties have filed pleadings in the present matter. It is only when the arbitral process has concluded that the matter can be entertained at the High Court as per the Arbitration Act.
7. The court further notes that in the said Plaint the Plaintiff under prayers C, D and E seeks the following:
 - c) An order declaring the Transfer and Registration of all that parcel of land known as LR NO Kisumu/Konya/6346 to the 2nd Defendant as unlawful.
 - d) An order for cancellation of Title No. Kisumu/Konya/6346 in the name of the 2nd Defendant.
 - e) An order for restoration of the register in respect of Title No Kisumu/Konya/6346 to the position before transfer to the 2nd Defendant.” The said prayers in my view relate to land matters therefore deny this court jurisdiction to determine the same.
8. Article 162 of the Constitution provides that the Environment and Land Court shall hear and determine disputes in relation to the environment, the use and occupation of and title to land. This position is also found under Section 13(2) of the Environment and Land Act.
9. A plain reading of prayers (c), (d) and (e) of the Plaint show that the Plaintiff is seeking a cancellation of transfer of title of a property and restoration of the property to the position it was in prior to the transfer.
10. These prayers relate to the title to land which falls under the jurisdiction of the Environment and Land Court as set up by Article 162 of the Constitution and the Environment and Land Act.
11. In the end, I find that this court does not have the jurisdiction to grant any of the orders sought in the Plaint dated October 24, 2016. This court’s hands are tied in relation to those orders and must down its tools.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 12th DAY OF JUNE 2023.

.....
J.W.W. MONGARE

JUDGE



In the Presence of:-

Ms. Bosibori for the Appellant.

Ms. Adhiambo holding brief for Mr. Amoth Odera for the Respondent.

Sylvia - Court Assistant

HCC NO. 432 OF 2016 – RULING	0
-------------------------------------	---

