



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 1221 OF 2013**

**JASWINDER SINGH VIRDI.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**BALJI SINGH VIRDI.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**=VERSUS=**

**SEKANDI HOLDINGS LTD.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**MICHAEL S. K. MUKASA.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**ALBERT S. K. MUKASA.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 29<sup>th</sup> September 2020 brought under Section 1A, 1B, 3A, 63(e), order 51 rule of the Civil Procedure Act Cap 21 laws of Kenya, Section 2, 3, 7, 13, 14, 20(i), 21(i) (2) 23 of Arbitration Act, Cap 49 (Repealed by Arbitration Act 4 of 1995) and other relevant provisions of the Land Registration Act, Article 159 of the Constitution and all enabling provisions of the law.

2. It seeks orders:-

***1. That an order by the Honourable Court be issued ordering the honourable Arbitrator appointed to solve the dispute between the Applicants and Respondents to release the final award.***

***2. That the Honourable Court be pleased to issue prohibitory order restraining the Respondents from interfering with one unit of the 32 units/apartments erected on Land Reference Nos IR 108144 LR No 9800 and IR 108146 LR No. 9799, pending issuing of the final award by the Arbitrator.***

***3. That the honourable court be pleased to order attachment of one unit of the 31 units/apartments erected in mother titles property IR108144 LR NO 9800 and IR 10814 LR NO 9799 owned by the Respondents, pending issuing of the final award by the arbitrator.***

***4. That the honourable court be pleased to order the Arbitrator to award interest and costs and against the Respondents of a sum of Kshs.15,500,000/= already awarded to the Applicants.***

***5. That costs of the Application be provided for.***

3. The grounds are on the face of the Application and are set out in paragraphs (a) to (n).

4. The application is supported by the affidavit of Jaswinder Singh Viridi, the 1<sup>st</sup> Plaintiff/Applicant herein sworn on the 29<sup>th</sup> September 2020 and a further affidavit sworn on the 19<sup>th</sup> April 2021.

5. The application is opposed. There is a replying affidavit sworn by Albert S. K. Mukasa, the 3<sup>rd</sup> Defendant/Respondent herein sworn on the 23<sup>rd</sup> November 2020.

6. On the 16<sup>th</sup> December 2020 the court with the consent of the parties directed that the notice of motion be canvassed by way of written

submissions.

7. The Plaintiffs/Applicants submissions are dated 19<sup>th</sup> April 2012. It is their submissions that the Arbitrator should have awarded interest on the initial sum of Kshs.15,500,000/- from the date the sum was paid by the Applicants to the Respondents until the award was issued. Further that the Arbitrator having determined so should have awarded costs to the Applicants.

8. It is the Defendants'/Respondents' submissions that the Arbitration is still pending. Several partial awards have been issued by the Arbitrator. Vide order for directions No 10, the Arbitrator set out clearly the list of issues to be canvassed by the parties. Vide Order for Directions No. 15 the Arbitrator set out his fees and also indicated in his direction that he would issue directions regarding the pending award upon receipt of his fees as well as other outstanding payments. The Respondents duly honoured the Arbitrators demand for fees and were issued with a receipt dated 7<sup>th</sup> March 2019.

9. I have considered the Notice of Motion and the affidavits in support. I have also considered the submissions filed on behalf of the parties and the authorities cited. The issue for determination is whether this application is merited.

10. Section 32(B) (2) of the Arbitration Act (Cap 49 Laws of Kenya) provides that:-

***“Unless otherwise agreed by the parties, in the absence of an award or additional award determining and apportioning the costs and expenses of the arbitration, each party shall be responsible for the legal and other expenses of that party and for an equal share of the fees and expenses of the arbitral tribunal and any other expenses relating to the arbitration.”***

***Subsection 3 Provides that:-***

***“The arbitral tribunal may withhold the delivery of an award to the parties until full payment of the fees and expenses of the arbitral tribunal is received.”***

***Subsection 4 provides that:-***

***“If the arbitral tribunal has, under subsection (3), withheld the delivery of an award, a party to the arbitration may, upon notice to the other party and to the arbitral tribunal, and after payment into court of the fees and expenses demanded by the arbitral tribunal, apply to the High Court for an order directing the manner in which the fees and expenses properly payable to the arbitral tribunal shall be determined.”***

11. It is clear that under subsection (4) the Plaintiffs/Applicants could only move this court after depositing in court the fees and expenses awarded by the Arbitral tribunal. There is no evidence of such deposit into court.

12. The Arbitral Tribunal was clear in its order for Directions No 15.

***Clause 3 states:-***

***“The Tribunal hereby calls for a further deposit of Kshs.3,450,000/- of which each party shall pay Kshs.1,725,000 on or before 4<sup>th</sup> March 2019”.***

The Defendants/Respondents have attached a receipt dated 7<sup>th</sup> March 2019 to confirm that they have settled the fees. The Plaintiffs/Applicants on the other hand have not complied.

13. In clause 5: The Arbitral Tribunal states.

***“The Tribunal will issue directions regarding the award upon receipt of the above and any other outstanding payments”***

It is my view that the Plaintiffs/Applicants know why the final award has not been released.

14. I have considered the conditions set out in the case of **Giella vs Cassman Brown & Company Limited [9173] EA 358** and I find that the Plaintiffs/Applicants application has not met any of these conditions. They have not made out a good case for the issuance of prohibitory orders.

15. I also find that the Plaintiffs/Applicants have failed to demonstrate that the Defendants/Respondents are in the process of disposing the suit property to the members of the public.

16. In conclusion I find no merit in this application and the same is dismissed with costs to the Defendants/Respondents

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 25TH DAY OF NOVEMBER 2021.**

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**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiffs

Ms Muthama for R. M. Mboya for the Defendants/Respondents

Steve- Court Assistant