



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KWALE**

**ELC NO. 119 OF 2021**

**(FORMELY ELC NO. 311 OF 2017 MOMBASA.)**

**SANDY CREEK HOLDINGS LIMITED**

**VERSUS**

**HEWA BORA LIMITED..... 1<sup>ST</sup> DEFENDANT**

**LEWIS KAMAU KANYOKO.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. This matter was fixed for hearing on 16<sup>th</sup> November 2021. The hearing proceeded physically in Kwale when the Plaintiff called Christopher Erick Githaiga Nottingham as its witness. He was led in evidence by his Counsel Mr. Rugo and stepped down after re-examination.

2. Mr. Rogo informed the court that his next witness was Mr. Gitau Gikonyo, the lawyer who acted for both parties in the conveyance relating to the suit property. That Mr. Gikonyo was averse to signing a witness statement in this regard as he did not want to appear as if he were taking sides for either of parties having acted for both of them in the sale of the suit property. He would be conflicted and was bound by advocate client confidentiality. Further that Mr. Gitau has opted to appear as an officer of the Court.

3. Based on the foregoing Counsel sought for witness summons to issue.

4. Ms. Wainaina Counsel for the defendant protested that she was being ambushed. That the defendants had assumed that the said witness had been dropped since the witness statement had not been forthcoming and had not been filed. Counsel urged that Mr. Gikonyo should file his witness statement and state his constraints therein.

5. In further response Mr. Rogo stated that Mr. Gikonyo having acted for both parties in the conveyance has information that will assist both parties as a material witness.

6. I have considered the application and the submissions of both Counsel. The dispute is based on a sale agreement whose authenticity is not denied by either party. The agreement is plain and simple and from looking at it this court sees no reason why the advocate would be called to give evidence on the same. This is not to say that Counsel is estopped from calling Mr. Gitonga as a witness, he still has the option to do so. In my view the Plaintiff is clearly seeking the courts help in bringing their evidence to court. Moreover, Counsel has not cited to this court the legal basis upon which this court may summon a witness as an officer of this court. This is a civil matter the parties are expected to use the best of their efforts to marshal their witnesses and evidence that will prove their cases. The Court in a dispute before it is expected to be impartial and or neutral, expected to arrive at a determination based on the evidence, the facts placed before it and guided by the law.

The upshot is that the request is declined.

Date for further hearing to be fixed at the registry on priority basis this being a partly heard matter.

**DATED THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2021.**

**HON. ADDRAYA EDA DENA**

VIA EMAIL AS PROVIDED BY THE PARTIES

Plaintiff – advocatesgw@gmail.com

Defendant pleadings@mgmail.com