



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT BUNGOMA

ELC CASE OS E008 OF 2021

VINCENT MABONGA WABULEPLAINTIFF

VERSUS

JACOB SIMIYU WABULE..... DEFENDANT

2/12/2021

Coram: Hon. B. N. Olao JUDGE

CA: Joy

Language: English/Kiswahili

Mr Wamalwa Simiyu for Applicant present

Respondent present

ORDER

Following long deliberations in this matter off record, it is clear to the Court that some of the officials of the **BAKITWIKWA (BATUKWITA)** Association who wrote the letter dated 12th October 2021 requesting to be allowed to arbitrate over this dispute which involves siblings are conflicted and cannot therefore be expected to arbitrate over this dispute impartially and objectively.

When the letter dated 12th October 2021 was received by this Court, I directed the Deputy Registrar to write to the clan leadership and the parties to attend Court on 9th November 2021 so that the parties could confirm if they were ready to have the dispute arbitrated by the clan outside Court. The record shows that on 9th November 2021, the parties attended before the Deputy Registrar as directed and agreed to pursue an out of Court settlement. This was all done in the spirit of **Article 159 (2) (c)** of the **Constitution** and the need to pursue an Alternative Justice route to resolution of disputes more so those involving family.

However, when the parties together with some of the officials of their clan and **MR SIMIYU** Counsel for the Applicant appeared before me on 2nd December 2021 to find out if they had arrived at a resolution to the dispute, one **EDWARD NGOYA MASAKHA** the Assistant Secretary General to the clan informed the Court that they had resolved the dispute and filed a report on 23rd November 2021.

However, following lengthy off record deliberations involving the parties, **MR SIMIYU** and **MR EDWARD NGOYA MASAKHA** as well as **MR CHARLES WAMALWA BARAZA** another official of the clan, it became obvious to the Court that the officials of the clan were conflicted and could not therefore be expected to render an impartial and objective resolution in the matter. In the circumstances, their award dated 14th November 2021 which was forwarded to this Court vide their letter dated 19th November 2021 and filed herein is expunged from the record and returned to them.

Meanwhile, in the course of the off record proceedings, the Court learnt that the Respondent is a sick person and may not be able to prosecute his defence. Indeed, he has not even filed his response to the Originating Summons to – date although there is even no evidence to show that he has infact been served with the same. Nonetheless and at my request, **MR MURUNGA** has kindly agreed to take up the matter on pro – bono basis on behalf of the Respondent. I am grateful to him for that kind gesture which is one way of giving back to society.

This matter shall therefore be mentioned on 19th January 2022 to give **MR MURUNGA** time to get instructions and file his documents in

response to the Originating Summons. I am equally grateful to **MR SIMIYU** Counsel for the Applicant for being supportive during the whole deliberations.

Meanwhile, it is now turning out that **MR EDWARD NGOYA MASAKHA** the Assistant Secretary General to the clan and **MR CHARLES WAMALWA BARAZA** have taken the original sale agreement from the Applicant. I direct that they be bonded in the sum of Kshs. 10,000/= each and to produce the said original agreement and hand it over to **MR SIMIYU** Counsel for the Applicant on or before 8th December 2021.

BOAZ N. OLAO.

J U D G E

2nd December 2021.

Later same day: -

1:30 pm.

Coram as before

Mr Simiyu – present

Mr Murunga – present

Mr Simiyu: - The original agreement has now been availed.

Court: - The agreement having been availed, both **MR EDWARD NGOYA MASAKHA** and **MR CHARLES WAMALWA BARAZA** are hereby discharged.

J BOAZ N. OLAO.

U D G E

2ND DECEMBER 2021.