



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

MISCELLANEOUS CASE NO. 280 OF 2008

BETWEEN

SURJIT SINGH HUNJAN .....1<sup>ST</sup> PLAINTIFF

DARKSHAN KAUR HUNJAN ..... 2<sup>ND</sup> PLAINTIFF

AND

THE DEPOSIT PROTECTION FUND BOARD (sued as the

Liquidator of Prudential Building Society) .....DEFENDANT

RULING NO. 2

1. The plaintiffs in this matter brought this Originating Summons dated 2<sup>nd</sup> April 2008 seeking several questions for determination relating to the sale of the property known as LR. No. 12565/26 by the defendant. What remains for determination is an issue of accounts between the parties regarding what is due. I directed the parties to agree on alternative dispute resolution in order to resolve the outstanding issue of reconciliation of statements of accounts.

2. Both parties are agreeable to mediation. However, it appears from the record that it may not be possible to agree with the issue of accounts as both parties take disparate views of the matter. Both parties have filed separate statements of account in that regard. Since the issue is one of accounts, I doubt that the court is well placed to determine the same.

3. Alternative dispute resolution is recognized by the Constitution and it is the court's constitutional imperative under **Article 159(2)(c)** of the Constitution to promote all forms of Alternative Dispute Resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms. This imperative is supported by various provisions of the law that grants this court jurisdiction to make necessary orders. **Section 59C** of the **Civil Procedure Act** which provides as follows:

59C(1) A suit may be referred to any other method of dispute resolution where the parties agree or the Court considers the case suitable for such referral.

(2) Any other method of alternative dispute resolution shall be governed by such procedure as the parties themselves agree to or as the Court may, in its discretion, order.

(3) Any settlement arising from a suit referred to any other alternative dispute resolution method by the Court or agreement of the parties shall be enforceable as a judgment of the Court.

(4) No appeal shall lie in respect of any judgment entered under this section. [Emphasis mine]

4. There is also **Order 46 rule 20** of the **Civil Procedure Rules** which state as follows:

20. (1) Nothing under this order may be construed as precluding the court from adopting and implementing, of its own motion or at the request of the parties, any other appropriate means of dispute resolution (including mediation) for the attainment of the

overriding objective envisaged under sections 1A and 1B of the Act.

(2) The court may adopt an alternative dispute resolution and shall make such orders or issue such directions as may be necessary to facilitate such means of dispute resolution.

(3) Where a court mandated mediation adopted pursuant to this rule fails, the court shall forthwith set the matter down for hearing and determination in accordance with the Rules.

5. All the provisions I have cited empower the court to act on application of the parties or *suo moto* in an appropriate case. As I have shown, this is a case that would benefit from arbitration as the issue of accounts is technical in nature. Given the age of the matter, it is important that the issues be resolved expeditiously through alternative means.

6. Taking into account all the circumstances, I direct that the issue of reconciliation of accounts of the loan statements between the plaintiffs and the defendant shall be referred to arbitration on the following terms;

**1. The parties shall agree on a single Arbitrator who shall be a Certified Public Accountant who shall determine the matter within fourteen (14) days from the date hereof;**

**2. Failing which the Chairperson of the Institute of Certified Public Accountants (ICPAK) shall appoint a Certified Public Accountant as Arbitrator to determine the dispute herein;**

**3. The Arbitrator shall determine the dispute within sixty (60) days of appointment and file the award before this court;**

**4. Each party shall bear its own cost of the arbitration;**

**5. Either party be at liberty to apply.**

**DATED and DELIVERED at NAIROBI this 7<sup>TH</sup> day of FEBRUARY, 2020.**

**D. S. MAJANJA**

**JUDGE**

Court Assistant: Mr. M. Onyango

Ms Sagini instructed by Cheptumo and Company Advocates for the plaintiffs.

Ms Simiyu instructed by Otieno Okeyo and Company Advocates for the defendant.