



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L MISCELLANEOUS APPLICATION NO. 15 OF 2019

CHESERET ARAP KORIR.....APPLICANT

VERSUS

EQUATORIAL LAND HOLDINGS LIMITED.....RESPONDENT

RULING

1. The Respondent filed the Motion dated 10th June, 2019 seeking in prayer (1) to have the Applicant ordered to within 30 days deposit in court or in a joint interest earning bank account in the names of Law firms on record Kshs. 2 Million or some other substantial sum in respect of the Respondent's costs of arbitration of Kshs.525,500 and its anticipated legal costs of the arbitration pending the determination of the Applicant's application dated 6th May, 2019 that seeks to have the arbitral award set aside. The Respondent also seeks in prayer (2) for stay of proceedings of the Applicant's application dated 6th May, 2019 that seeks the setting aside the arbitral award pending the provision of the payment in prayer (1) and costs. The application is based on the ten (10) grounds on its face and supported by the affidavits sworn by David May, the Managing Director on the 10th June, 2019 and 26th July, 2019.

2. The application is opposed by the Applicant through his replying affidavit sworn on the 5th July, 2019.

3. The learned Counsel for the Respondent filed their written submissions dated 23rd September, 2019. No submissions by the learned Counsel for the Applicant in respect of this application, was traceable on the record.

4. The issues for determinations are as follows:

a. Whether the Respondent has made a reasonable case for requiring the Applicant to provide security for costs.

b. Whether stay of proceedings in respect of the Applicant's application dated 6th May, 2019, pending the provision of security of costs should issue.

c. Who pays the costs?

5. The court has carefully considered the grounds on the Motion, the affidavit evidence, submissions, the record and come to the following findings;

a. That the Applicant's Motion dated the 6th May, 2019 that is sought to be stayed under prayer (2) has since been determined and allowed vide the ruling delivered today. That prayer has therefore been overtaken by events.

b. That the Court having allowed the Applicant's Motion dated the 6th May, 2019 and dismissing that by the Respondent's dated 10th June, 2019 through the ruling delivered earlier today, prayer (1) of the application seeking for security for costs has also been overtaken by events.

c. That in view of the findings in (a) and (b) above, the Respondent has failed in both prayers in the Motion, and pursuant to **Section 27 of the civil Procedure Act Chapter 21 of Laws of Kenya** should pay costs to the Applicant.

6. That the upshot of the foregoing is that the Respondent's Notice of Motion dated 10th June, 2019 seeking for security of costs and stay order has no merit and is dismissed with costs.

It is so ordered.

Dated and signed at Eldoret this 26th day of February, 2020.

S. M. KIBUNJA

JUDGE

Ruling read in open court in the presence of:

Mr. Kimani for Applicant.

Mr. Menezes & Maganga for Respondent.

Court Assistant: Christine