



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
FAMILY DIVISION
CIVIL SUIT NO. 48 OF 2015 (O.S)

**OM KUMAR MANDAL (suing on her behalf and on the behalf of the estate of
PREM PRAKASH MANDAL.....APPLICANT/RESPONDENT**

VERSUS

ANIL MANDAL.....1ST RESPONDENT/APPLICANT

SAROJ MANDAL.....2ND RESPONDENT

MUKESH MANDAL.....1ST INTERESTED PARTY

NIMRMALA DEVI R. K. MANDAL & SHAMMY RAJINDER MANDAL

(on behalf of the estate of

RAJINDER KUMAR MANDAL (Deceased).....2ND INTERESTED PARTY

RULING

1. The application subject of this ruling is dated the 28th of January, 2020. It was filed by Anil Kumar Mandal 1st Respondent (1st Respondent) and who seeks for the following orders:

a. That this suit be consolidated with ELC Case No. 655 of 2015 RAJINDER KAUR MANDAL vs ANIL KUMAR MANDAL & ANOR and H.C.C.C. NO. 1458 of 2005 VIJAY KUMAR MANDAL vs RAJINDER KUMAR MANDAL.

b. Spent

c. That on consolidation the 3 suits be referred to arbitration and pending arbitration all suits be stayed.

2. The application is based on grounds that the 3 suits deal with the same subject matter; properties that were acquired by the Applicant and 4 other family members who engaged in business together, the parties had in an effort to conclude the matter entered into a deed of settlement in 1996, which deed provided for further arbitration in the event of a dispute. And since disputes have risen giving rise to other suits and an unsuccessful court annexed mediation, there is need for further arbitration.

3. The application was opposed by OM Kumar Mandal (Applicant), the 1st Interested Party Mukesh Mandal and 2nd Interested Party Rajinder Kumar's estate. On the other hand, it was supported by the 2nd Respondent Saroj Mandal.
4. The applicant's points of contestation are to be found in grounds of opposition dated 13th February, 2020 where it is urged that the Deed of Settlement referred to by the 1st Respondent is illegal, and null and void; the application contravenes Section 5 of the Arbitration Act; it is incurably defective as the 3 suits deal with distinct issues under 3 different jurisdictions and therefore the threshold of consolidation have not been met; it is an abuse of court process and meant to delay the matter.
5. The 1st Interested Party on his part filed grounds of opposition on the 5th of February 2020 wherein he objected to the legality and validity of the Deed of Settlement dated 18th April 1996 and subsequent Supplementary Agreement of 4th October, 2006. Secondly, he was not a party to any of the two and therefore not bound by their terms. Further, he urges that the Applicant had no capacity to bind the estate of Prem Prakash Mandal at the point of signing the Deed of family Settlement and neither the Supplementary Agreement. That indeed the applicant did not have legal capacity or authority to transfer the capital assets without the participation and/or consent of other representatives of her late husband's estate and in particular the 2nd Interested Party, further arbitration if any should be carried out in line with the Indian Succession Act which was applicable at the time of Prem Prakash Mandal's death.
6. The 2nd Interested Party's estate opposed the application vide a replying affidavit dated 12th February, 2020 sworn by Shammy Rajinder Mandal. The grounds of opposition are that; the Deed of Settlement dated 18th April 1996 became inoperative in view of a supplementary agreement by the parties dated 4th October, 2006 which excluded the provision for arbitration. And that in view of the 2nd agreement the 2nd Respondent withdrew his caveat against the granting of confirmation in Succession Cause No. 357 of 1990. Further that, it is imperative that before any arbitration, Succession Cause No. 592 of 1989 be consolidated with this suit and all parties allowed to participate. Further, the applicant without right purported to represent his late father's estate and the estate of Ved Prakash Mandal, and his actions are a breach of the law of Succession Act. That the applicant herein was not at the time of signing of the Deed of Settlement a holder of any grant of letters of representation for the estate of her late husband as the grant in her husband's succession cause was conformed in 1998 neither was she the executors of the will of Ved Prakash Mandal, therefore the Deed of settlement entered into on 18th of April 1996 was null and void *abinito*, lastly undertakings made pursuant to the said Deed of Settlement were never honoured by the 1st Respondent.
7. The applicant the widow of Prem Prakash Mandal (the applicant) moved the court against her husband's four brothers and or their estates seeking accounts and share of proceeds from income generating assets that were owned by the four brothers. This court is therefore not dealing with succession issues as such.
8. The documents made available in evidence indicate that the Applicant, the deceased brothers, and the 1st respondent were parties initially to an informal agreement dated 18th February, 1996 which was reduced to a Deed of family settlement and/or arrangement dated same day the 18th of February 1996 and a later a Supplementary Agreement dated the 4th of October, 2016. All along the Applicant herein signed for herself and on behalf of the estate of her late husband.
9. Despite the above-mentioned agreements, mediation both in and outside court the parties still remain divided, which dispute informs this suit and 3 others in other courts. Secondly the application subject of this ruling, seeks inter alia stay of suits which are an off shoot of the issues that have bedeviled the four families for years.

The picture quite clear is that the agreements and/or deeds made reference to failed to work and /or have been ignored by the parties.

10. The Deed of Family Settlement was signed on 18th of February, 1996, 24 years ago. The Supplementary Agreement on 4th October, 2006; 14 years ago yet the family remains dogged in controversy resulting into multiple of cases and some beneficiaries crying foul.

11. Both the Constitution and the overriding object of the Civil Procedure Act require that all parties before court be subject to a just, fair, expeditious and efficient disposal of suits. In as much as other forms of dispute resolution mechanism are encouraged and provided for in law it appears to this court that these methods have failed.

12. **Section 6(1)** of the **Arbitration Act** requires court proceedings be stayed to pave way for arbitration unless where the court finds that the arbitration agreement is null and void, inoperative and incapable of being performed.

13. The court observes that parties including the one now seeking to refer the matter to Arbitration failed to observe terms agreed upon in an earlier arbitration. In the court's view for the ends of justice to be met there is need to settle this long outstanding matter. The circumstances of the case militate against referring this matter for yet another arbitration since previous such engagements were incapable of being performed.

14. The application is therefore declined on both limbs.

15. And in order to move this matter forward parties are directed to file and exchange witness statements to enable oral hearing of the pending original summons. A date be fixed for further directions.

16. For now, each party to bear their own costs.

Dated Delivered and signed this 11th day of June, 2020.

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ALI-ARONI

JUDGE