



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC SUIT NO. 181 OF 2014

ANNE MUTHONI KARANU.....PLAINTIFF

VERSUS

LA NYAVU GARDENS LIMITED.....DEFENDANT

RULING

1. This is a Ruling in respect of a Notice of Motion dated 3rd April 2014 filed by the Defendant/Applicant. The Applicant seeks stay of proceedings pending arbitration and that this matter be referred to arbitration as per the provisions of the letter of offer dated 17th December 2010. The Applicant contends that there is a binding agreement between the parties to refer the dispute to either mediation or arbitration.

2. The Plaintiff/Respondent had entered into an agreement with the Applicant in which agreement the Respondent was purchasing a portion of land in a housing scheme on LR No. 2259/703. The Respondent signed a letter of offer dated 17th December 2010. Clause 10 of this letter of offer provided as follows:-

“ Any dispute(s) arising from this transaction shall be resolved amicably by mediation with the presiding Bishop of CITAM as the sole mediator AND should no resolution be reached, then the dispute shall be referred to arbitration before a sole arbitrator to be appointed by agreement of the parties, and should there be no such agreement within fifteen (15) days the sole arbitrator shall be appointed by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch.

The sole arbitrator must be an advocate of High Court of Kenya of not less than fifteen (15) years standing. The law applicable shall be the arbitration Act, 1995 and the Arbitration Rules 1998. The Arbitration shall be held in Nairobi. The award by the sole Arbitrator shall be final and binding between the parties”.

3. When a dispute arose, the Respondent filed the present suit. Immediately after entering appearance but before filing any pleadings, the Applicant applied for stay of proceedings under Section 6 of the Arbitration Act. The Applicant now contends that as parties had specifically set out the manner in which any dispute arising was to be resolved, the court should stay any further proceedings and refer this matter to arbitration.

4. The Respondent filed a replying affidavit sworn on 30th September 2019 in which she appears not to be averse to stay of proceedings. She states that in a bid to have the dispute mediated by the presiding Bishop of CITAM church, she approached the presiding Bishop CITAM church who bluntly declined to mediate for reasons given to her. She further stated that her lawyer and the Applicant's lawyer also approached the presiding Bishop CITAM Church who also declined to mediate citing the same reasons she had given her.

5. The Respondent states that if the Court is inclined to refer the matter to mediation, it should refer it to the Court annexed mediation and if for any reason the court is again inclined to refer the matter to arbitration, it should fix the time within which the arbitrator should file the award. This is because she has been repaying a loan for eleven years yet the applicant is holding on to the purchase price.

6. The parties had agreed to dispose of the application by way of written submissions. The Applicant filed its submissions on 29th October 2019. The Respondent was given 14 days from 4th November 2019 within which to file her submission. As at the time of writing this ruling the Respondent had not filed any submissions and if any were filed, then they are not in the file.

7. I have considered the Applicant's submissions vis-a vis the application and the response to the same by the Respondent. I have already said hereinabove that the Respondent is not averse to this matter being referred to arbitration though she prefers court annexed mediation. The letter of offer of 17th October 2010 was clear that in case of a dispute, the dispute was to be referred to mediation or arbitration. Already the parties have attempted mediation which has failed to materialize. The other avenue open is reference to arbitration in accordance with the

wishes of the parties.

8. The contract did not envisage mediation through court annexed mediation. The only option open therefore is arbitration and the manner of appointment of arbitrator is clearly spelt out in the offer letter. I will not fix the timelines for filing the award as suggested by the Respondent as to do so will be encroaching on to the discretion of the arbitrator to set his/her own timelines. I therefore stay the proceedings in this case and refer the matter to an arbitrator who shall be appointed in the manner contemplated in clause 17 of the letter of offer dated 17th October 2010. The applicant shall have costs of this application.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 6th day of February 2020.

E.O.OBAGA

JUDGE

In the presence of:

M/s Masumi for Mr Oloo for Plaintiff

Court Assistant: Hilda

E.O. OBAGA

JUDGE