



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**

**E.L.C. NO 53 OF 2014**

**FORMERLY KERUGOYA 86 OF 2012**

**JULIUS MACHARIA**  
**MWANGI.....PLAINTIFF**

**VERSUS**

**GITHAMBO TEA FACTORY.....1<sup>st</sup> DEFENDANT**

**KENYA TEA DEVELOPMENT AGENCY HOLDINGS LTD..... 2<sup>nd</sup> DEFENDANT**

**RULING**

**Introduction**

The defendants have raised a preliminary objection which raises a point of law. According to them the entire suit is defective and incompetent, because it is in contravention of an arbitration clause. According to the defendants, the arbitration clause required both parties to have the matter resolved by way of arbitration.

The plaintiff has opposed the preliminary point of objection.

**The Case for the Defendants:**

The defendants in their defence indicated clearly in paragraph 14 that this court lacks jurisdiction and the matter was to be referred to arbitration as provided in the agreement for the sale of land dated 8<sup>th</sup> May, 2012. They have also filed submissions in support of the preliminary objection. The contract for the sale of land in clause 11 provides for arbitration in mandatory terms.

**The Case for the Plaintiff:**

The plaintiff as I have already noted has opposed the preliminary objection. According to the plaintiff, the whole contract is flawed and is tainted with fraud. Additionally, the plaintiff urges the court not to base its ruling on a contract which in itself is challenged in the pleadings.

**The Applicable Law**

The law that applies in this case is to be found in the Arbitration Act Chapter 49 of the Laws of Kenya. According to the provisions of section 6 of the Arbitration Act, the court is authorized to stay proceedings of the suit if it is subject to an arbitration clause. It goes further to provide that this should be

done at the earliest opportunity. However, there are exceptions to this rules which are not relevant to the matter in issue.

**Issues for Determination:**

In the light of what I have considered in the foregoing paragraphs, the following are the issues for determination:

1. Whether or not this suit is governed by the arbitration clause.
2. Who should pay for the costs of this application.

**Evaluation of the Evidence, Findings and the Law:**

I have considered the pleadings of both parties, the submissions of their counsel and the applicable law. I find that the parties entered into an agreement, which contained the arbitration clause. According to the arbitration clause in the agreement for the sale of land, the parties clearly agreed that all claims and disputes that were to arise under the agreement were to be referred to be a single arbitrator to be appointed by the parties.

It was also part of the agreement that the parties were required first to settle any dispute by negotiations before resorting to arbitration. This is clear from clause 11.2 of the Arbitration Clause in the agreement for the sale of land. I therefore find that there is a valid binding Arbitration Clause between the parties. That is the forum the parties chose to settle their disputes. It is binding upon them.

**Verdict and Disposal Order:**

In the light of the foregoing matters, I hereby make the following orders:

1. The preliminary objection is hereby upheld.
2. The proceedings in this suit shall be stayed.
3. The matter is hereby referred to arbitration.
4. Costs of this application shall be costs in cause.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this.. **9<sup>th</sup>** ... day of **March,..2015**

In the presence of the plaintiff and Mr. Njoroge holding brief for Mr Ngigi and in the absence of the defendant.

Court clerk Mr Muriithi

**J.M. BWONWONGA**

**JUDGE**