

REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Civil Application 110 of 2012

ZAITUNI NATE MAKOKHA CLAIMANT

V E R S U S

MWATEMA NABWOBA OLALI RESPONDENT

R U L I N G

In her Notice of Motion dated 16.11.2012, the applicant is seeking leave to enforce the award made by some two arbitrators against the respondent. The application is supported by her affidavit. It is contended in the application that there was a dispute between the parties involving the sale of plot number North Wanga/Kholera/2007, measuring 0.80 Ha. The matter was referred to the arbitrators who awarded the claimant KShs.240,000/=, a further KShs.240,000/= was awarded as general damages and costs were taxed by the Arbitrators at KShs.64,000/=.

I have gone through the documents provided by the claimant in form of the application and the proceedings. I do find that those proceedings do not satisfy the provisions of the **Arbitration Act 1995**. No proper proceedings were provided to this other than a one page document titled **PRELIMINARIES** and signed by the two Arbitrators, **E. W. OYWA & ASSOCIATES and KISEMBE KILISWA**. It is clear from that document that the two arbitrators were appointed by the claimant. The evidence of the witnesses and the parties is not indicated. The document indicated as preliminaries cannot pass as proceedings and judgment of the arbitrators.

Under the provisions of Section 36 of the Arbitration Act, I do hereby decline to have that award enforced until the claimant provides the following:-

1. The original arbitration agreement between the claimant and the respondent.
2. The original Sale Agreement between the claimant and the respondent.
3. Proof of payment, if any, to either party involved in the agreement.
4. Proof that the respondent participated in the arbitration.
5. Proof that the respondent participated in the elections of the arbitrators; i.e. that the respondent participated in the elections of the arbitrators and that she/he signed to have the matter heard by two arbitrators.

Further, after filing the above information, the applicant to serve the respondent through the court bailiff/process server for any date that will be given for the hearing of this matter. Unless the above information is provided, the award of the arbitrators shall stand suspended.

DATED AT KAKAMEGA THIS 2ND DAY OF MAY 2013

SAID J. CHITEMBWE

J U D G E