



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL SUIT NO. 599 OF 2012

LEONARD MUNYUAPLAINTIFF

VERSUS

VALLEY CREEK LTD.....DEFENDANT

RULING

1. The Plaintiff and the Defendant were parties to a sale agreement in respect of a residential apartment. The Plaintiff paid some money towards the purchase price. The sale agreement contained an arbitration clause. In the course of the transaction differences arose between the parties and the arbitration clause was invoked and a sole arbitrator appointed.
2. In the course of the arbitration proceedings the Defendant (who was the vendor) purported to rescind the contract of sale. It also apparently informed the Plaintiff as well as the arbitrator that it intended to dispose of the property to a third-party by way of sale. The Plaintiff therefore came to this court by this suit seeking various injunctive reliefs (both restraining and mandatory), specific performance and mesne profits.
3. Together with the plaint the Plaintiff filed **notice of motion dated 20th December 2012** seeking

appropriate injunctive reliefs (both restraining and mandatory) pending disposal of the suit. The Defendant entered appearance and raised a preliminary objection on a point of law by a notice dated 8th January 2013. That preliminary objection is to the effect that the court lacks jurisdiction to hear and determine the suit upon the grounds that the contract between the parties contained an arbitration clause; that the said arbitration clause has already been invoked and the dispute between the parties referred to arbitration; and that in any event the arbitrator has jurisdiction to grant the interim orders sought.

4. The preliminary objection was canvassed by way of written submissions. The Defendant's submissions were filed on 17th January 2013 while those of the Plaintiff were filed on 8th February 2013. I have considered those submissions, including the cases cited.

5. The Plaintiff came to this court because of the precipitate action taken by the Defendant in the course of the proceedings before the arbitrator. That precipitate action was the purported rescission of the contract of sale. There was also the threat by the Defendant to dispose of the suit property. The Plaintiff therefore came to court to seek preservation of the suit property.

6. **Section 7(1) of the Arbitration Act, No. 4 of 1995** provides as follows -

“It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.”

7. That statutory provision provides a sufficient answer to the preliminary objection raised by the Defendant. I need not consider anything more. The preliminary objection is without merit and is overruled with costs to the Plaintiff. It is ordered.

DATED AND SIGNED AT NAIROBI THIS 4TH DAY OF JULY 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 5TH DAY OF JULY 2013