



REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Civil Suit 524 of 2009

JACKLINE W. NJERU T/A JAVISAPA ENTERPRISES..... PLAINTIFF

VERSUS

CANUCK HOLDINGS LIMITED..... DEFENDANT

RULING

By this application, the Applicant prays for orders of stay of execution of the Preliminary decree issued herein on 9th December, 2009; a temporary injunction restraining the Respondents from selling the apartments constructed on the suit property pending the hearing and determination of this application; that the preliminary decree given on 7th December, 2009 and any consequential orders to be set aside; the ex parte judgment entered in default of defence on 9th December, 2009 be set aside; and that the dispute to be referred to arbitration.

The application is supported by the annexed affidavits of Joseph Makori, Advocate and Michael Scanlon, a director of the Applicant. It is based on the grounds that, inter alia, the Applicant was never served with Summons to Enter Appearance; the dispute between the parties is governed by a contract which provides for settlement of disputes by arbitration.

It is common ground that the dispute between the parties is governed by a contract which provides for settlement of disputes by arbitration. Under normal circumstances, the issue of arbitration ought to be raised in the proceedings as early as possible. In this instance, however, I note that there is a similar dispute between the same parties in **HCCC No. 235 of 2009**. In that case, the matter was referred to arbitration. The arbitration process is much quicker and cheaper. If this matter proceeds in court, there is the possibility of the court coming to a different conclusion from the arbitrator in **HCCC No. 235 of 2009** and vice versa. I think it will be cost and time saving if the two matters can be referred to arbitration as they involve the same parties and raise similar issues.

For these reasons, I hereby make the following orders-

- 1. That this matter be and is hereby referred to arbitration in terms of the agreement between the parties**
- 2. That any further proceedings in this matter be and are hereby stayed pending the outcome of the arbitration process.**

3. Parties be at liberty to apply
4. Costs in the cause.

L. NJAGI
JUDGE

DATED and **DELIVERED** at **NAIROBI** this 7th day of November, 2012

ODUNGA
JUDGE