

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CAUSE NO. 46 OF 2019

ISAACK KIPTOO BWAMBOK.....PLAINTIFF/RESPONDENT

VERSUS

EQUATORIAL LAND HOLDINGS LTD.....1ST DEFENDANT/APPLICANT

KEREBE GOLD MINING LTD.....2ND DEFENDANT/APPLICANT

RULING

The applicants/defendants pray for orders that this application be certified as urgent and be heard inter-partes at the earliest date and that all proceedings in this suit be stayed pending arbitration as stipulated by clause 9 of the Lease Agreement dated 16th December, 2015 signed by the plaintiff/respondent and 1st defendant/applicant and in accordance with the Arbitration Act.

That the applicant be at liberty to apply for any other orders/directions as this honourable court may deem fit to grant. That the plaintiff/respondent be condemned to pay the costs of this application and the suit.

The application is based on grounds the plaintiff and 1st defendant entered into a Lease Agreement by which agreement it was provided that any disputes arising from or in connection with the Lease would be resolved by good faith negotiations between them and failing agreement after 30 days from the commencement of negotiations would be finally resolved through arbitration in accordance with the provisions of the Arbitration Act.

The suit herein has been instituted by the plaintiff/respondent in breach of the Arbitration clause in the agreement and is an abuse of the process of this honourable court in light of the express provisions of the Arbitration Act.

By virtue of the valid and binding arbitration clause in the Agreement, the plaintiff was bound to proceed to negotiations failing agreement within 30 days from date of commencement of the negotiations then to arbitration on matters in dispute in this suit. The 1st defendant/applicant is ready able and willing to proceed to arbitration on any dispute arising between the parties as stipulated in the arbitration clause.

I have carefully considered the application and the lease agreement do find that the parties herein are bound by the arbitration clause in their lease agreement. Proceedings herein are hereby stayed pending the outcome of the arbitration proceedings. The upshot of the above is that all proceedings in this suit are stayed pending conclusion of arbitration as per the lease agreement. Costs in the cause.

Dated and delivered at Eldoret this 30th day of July, 2019.

A. OMBWAYO

JUDGE