

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 127 OF 2018

EQUATORIAL LAND HOLDINGS LIMITED.....1ST PLAINTIFF/APPLICANT

KAREBE GOLD MINING LIMITED.....2ND PLAINTIFF/APPLICANT

VERSUS

CHESERET ARAP KORIR.....DEFENDANT

RULING

Equatorial Land Holdings Limited and Karebe Gold Mining Ltd hereinafter referred to as the applicants pray for an order that this honorable court be pleased to discharge and or vacate or set aside the orders issued on 1st March, 2019 restraining the 1st plaintiff from carrying on any activity on the suit parcels of land pending the outcome of the arbitration. The applicant prays for costs of the application.

The application is based on grounds that the arbitral proceedings have been concluded and the final award was given on 30th April, 2019. The arbitral award was in terms that the defendant is contractually bound to honour all the provisions of clause 2.2 of the lease agreement including renewal of the lease and determination of the rent amount and that the defendant herein should comply with the contractual provisions contained in clause 2.2 of the lease agreement dated 12th June, 2009 and extend the lease term for a further period of 10 years with effect from the 22nd January, 2019. It is claimed that the 1st plaintiff ceased all operation on the suit land by virtue of the court order.

The only prayers left in the arbitral proceedings are for costs of the suit and damages. The defendant was ordered to pay costs of Kshs.503,500. The respondent did not pay the arbitration costs and expenses forcing the applicant to do it.

The applicant believes that it would be unfair to maintain the orders after the conclusion of the arbitral proceedings.

According to the applicants, no prejudice will be caused on the respondent if the orders are lifted. The application is supported by the affidavit and further affidavit of David May.

In the replying affidavit of Cheseret Arap Korir, he states that the application is made in bad taste, it is misconceived and a waste of the court's precious judicial time. According to the respondent, the arbitral award is incomplete as evident in the proceedings as to issue of rent was not determined. The respondent states that granting the orders amounts to depriving the respondent land contrary to law.

Moreover, that the respondent has challenged the arbitral award. The setting aside of the orders will prejudice the respondent as the applicant will commence operations. The applicant has not deposited the Kshs.2,000,000 ordered by the court.

I have considered the application, supporting affidavit and further affidavit of *David May* and the replying affidavit of *Cheseret Arap Korir* and rival submissions of counsel on record and do find that this court issued interlocutory orders pending the Award in the Arbitral proceedings. This order was to lapse with the award of the arbitrator in the arbitral proceedings. The Arbitrator has already made his award and therefore, the interlocutory order lapses. The issue of rent will be agreed upon by the parties. This court cannot force the parties to agree on rent.

The upshot of the above is that the interlocutory orders issued on 1st March, 2019 restraining the plaintiffs from carrying on any activity on the suit parcels of land are hereby discharged as the arbitral award has already been made.

However, in the interest of justice, I do order that the **applicants to deposit Kshs. 3,000,000 in a joint interest earning fixed account to be opened within the next 14 days in the names of the advocates on record at the Kenya Commercial Bank, Eldoret branch as security for rent, pending the hearing of the application dated 6th May, 2019.** Costs of the application to the applicant.

Dated and delivered at Eldoret this 23rd day of July, 2019.

A. OMBWAYO

JUDGE