



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO. 678 OF 2017**

**KENIA REALTY LIMITED.....APPLICANT**

**=VERSUS=**

**SALOME WAIRIMU MIANO, MAINA MWANGI,**

**JOSEPH KARIUKI MIANO AND SUSAN WANJIKU MIANO**

[As personal representatives and beneficiaries of the

Estate of the late **ABDALLA ALI MIANO**]..... **RESPONDENTS**

**RULING**

1. This is the Chamber Summons dated 12<sup>th</sup> November 2018 brought under Section 6(1) of the Arbitration Act, 1995 and Rule 2 of the Arbitration Rules, 1997.

2. It seeks orders:-

***1. That the suit filed herein be stayed and be referred for Arbitration to a single Arbitrator agreed upon by the applicant and the respondents in accordance with Clause 22 of the Agreement for sale between the applicant and the respondents.***

***2. That the cost of this application and of this suit be borne by the applicant.***

3. The grounds are on the face of the application and are :-

***(a) That the applicant and the respondents executed between them an agreement for the sale of land dated 30<sup>th</sup> January, 2009.***

***(b) That the applicant failed to complete as stipulated in the agreement for sale and a dispute arose between the parties.***

***(c) That clause 22 of the agreement for sale provides that all disputes and questions that may arise touching on that agreement shall be referred to the decision of a single arbiter, who shall be agreed upon by the parties within thirty (30) days of the declaration that a dispute has occurred and that failing such agreement, the arbitrator shall be appointed by the Chairman for the time being of the Law Society of Kenya.***

***(d) That the suit filed herein is in contravention of Clause 22 of the parties' agreement for sale.***

4. The application is supported by the affidavit of Salome Wairimu Miano, one of the personal representatives of the Estate of the late Abdalla Miano/respondents sworn on the 12<sup>th</sup> November 2018 and a further affidavit sworn on the 4<sup>th</sup> February 2019.

5. The application is opposed. There is a replying affidavit sworn by David Muriuki Mambo, Managing Director of the Applicant, sworn on the 4<sup>th</sup> December 2018.

6. On the 17<sup>th</sup> December 2018 the court directed that the application be canvassed by way of written submissions. I have gone through the court record and it appears the respondents did not file their written submissions despite being represented in court on 12<sup>th</sup> February 2019.

7. It is the Respondents' contention that the arbitration clause on the agreement is still binding on the parties hence the application is properly before this court.

8. The applicant on the other hand contends that the arbitration clause has been invoked three times in an attempt to resolve the dispute between the parties with no success. The failure has been attributed to the respondents. The applicant feels that this dispute ought to be resolved by the court.

9. I have considered the notice of motion and the affidavits in support. I have also considered the replying affidavit, the submissions of counsel and the authorities cited.

10. In his replying affidavit sworn on the 4<sup>th</sup> December 2018, David Muriuki Mambo the managing director of the applicant has given a history of this dispute. I have gone through the annexures to the replying affidavit. I am convinced that the respondents herein have no intention of resolving the dispute herein through arbitration. I am aware that the Constitution of Kenya 2010 recognises alternative dispute resolution mechanisms including arbitration. However, in the instant case the respondents have used it to prolong this matter. The court is also alive to the overriding objectives envisaged in Section 1A, 1B of the Civil Procedure Act. The applicant herein is entitled to a just and expeditious resolution of this dispute. I find that this will not be achieved by referring this matter to arbitration given the several attempts made. I find no merit in this application and the same is dismissed.

It is so ordered.

**Dated, signed and delivered in Nairobi on this 25<sup>th</sup> day of September 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Miss Njoroge advocate for the Applicant

No appearance for the Respondents

Kajuju - Court Assistant