

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 927 OF 2016

MUKURU MUNGE.....PLAINTIFF

VERSUS

PAUL MUTISYA MUTUKU KALULU.....DEFENDANT

RULING

What is before me is the plaintiff's Chamber Summons application dated 5th February, 2018 seeking an order that the dispute between him and the defendant be referred to arbitration by the Chief of Lungu Lungu Viwandani Industrial Area, Nairobi and if the dispute is not resolved by the Chief, the plaintiff be at liberty to proceed with the suit before this court. I have considered the plaintiff's application together with the supporting affidavit. In my ruling of 28th April, 2017, I observed that the dispute between the parties herein should have been referred to the Chief of the area where the suit property is situated for resolution.

The dispute is now before this court. The court can only refer it to arbitration by agreement of the parties under Order 46 Rule 1 of the Civil Procedure Rules. There is no evidence that the defendant who did not respond to the plaintiff's application has consented to arbitration. This court has no power to force the defendant to arbitrate in the circumstances. I have considered whether it would serve any purpose if I was to refer the matter to mediation by the said Chief pursuant to the powers of the court under Order 46 rule 20 of the Civil Procedure Rules. Due to the nature of the dispute and the positions taken by the parties, I am of the view that mediation will not achieve much for the parties.

For the foregoing reasons, the application dated 5th February, 2018 must fail. However, all is not lost for the plaintiff. He can still call the area Chief as a witness if his evidence would assist the court in determining the dispute. The application is accordingly dismissed with no order as to costs.

Delivered and Dated at Nairobi this 19th Day of July 2018

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

N/A for the Plaintiff

Mr. Kivuva h/b for Mr. Musyoki for the Defendant

Catherine Court Assistant