



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 466 OF 2010**

**MAA 'O' LENG LIMITED.....PLAINTIFF**

**VERSUS**

**WARREN ROB WALKER.....1ST DEFENDANT**

**JOSEPH TIPTIP KAMORIO.....2ND DEFENDANT**

**TITLE BY WAY OF COUNTERCLAIM**

**WARREN ROB WALKER.....PLAINTIFF**

**VERSUS**

**MAA 'O' LENG LIMITED.....1ST DEFENDANT**

**ANTHONY ROWLAND RUSSELL.....2ND DEFENDANT**

**THE ART OF VENTURES LIMITED.....3RD DEFENDANT**

**RULING**

1. On 1/10/2010, Maa "O" Leng Limited (the **plaintiff**) brought this suit against Warren Rob Walker (the **1st defendant**) and Joseph Tiptip Kamorio ( the **2nd defendant**). It contended that it was the registered leasee from Shampole Group Ranch of a defined portion of land Title Number Kajiado/Shompole/3 situated in Kajiado County. It further contended that it build and owned an upper-end tourist lodge known as Shompole Lodge comprising of three lodging facilities known as: (i) Little Shompole; (ii) Main Shompole; and (iii) 360 Degrees House , collectively run, managed and marketed by the plaintiff. It added that the 1st defendant had interfered with the running of 360 Degrees House by purporting to give authority to the 2nd defendant to reside in 360 Degree House for free. He sought restraining orders against the defendants.

2. On 21/1/2011, the 1st defendant, Warrant Rob Walker, filed a defence and counterclaim. He named the following as the defendants in the counterclaim: (i) Maa "O" Leng Limited (1st defendant); (ii) Anthony Rowland Russell (2nd defendant); and (iii) the Art of Ventures Limited (3rd defendant).

3. On 15/7/2011, Art of Ventures Limited (the 3rd defendant in the counterclaim) brought a chamber summons application dated 15/7/2011 seeking an order staying the proceedings relating to the counterclaim in this suit, pending arbitration of the dispute in the counterclaim as stipulated in Clause 10.2 of a Memorandum of Understanding (M.O.U) between The Art of Ventures Limited and Warren Rob Walker. That application is the subject of this ruling.

4. Warren Rob Walker opposed the application through Grounds of Opposition dated 9/8/2011 and replying affidavit dated 8/11/2011. He contended that the order of stay does not lie because there is no arbitration agreement between all the parties to this suit.

5. Joseph Tiptip Kamorio opposed the application through an affidavit sworn on 8/11/2011 in which he deposed that he was not privy to the memorandum of understanding and/or arbitration agreement.

6. The application was canvassed through written submissions dated 7/6/2017. I have considered the said application together with the responses thereto. I have also considered the legal framework on stay of proceedings pending arbitration and the relevant jurisprudence. My pronouncements on this application will be brief.

7. It is trite law that an arbitration agreement is in itself a contract which binds parties to it. Secondly, an arbitration agreement cannot be invoked against a litigant who is not privy to the arbitration agreement.

8. In the application under consideration, the arbitration agreement is contained in an undated memorandum of understanding between The Art of Ventures (sic) and Warren Rob Walker. The other parties to the suit were not privy to the Memorandum of Understanding. The plaint has Maa "O" Limited (plaintiff), Warren Rob Walker (1st defendant), and Joseph Tiptip Kamorio (2nd defendant). The counterclaim has Warren Rob Walker (plaintiff), Maa "O" Leng Limited (1st defendant), Anthony Rowland Russell (2nd defendant) and The Art of Ventures Limited (3rd defendant). It follows that under the doctrine of privity, Maa "O" Leng Limited and Anthony Rowland Russell who are defendants in the counterclaim cannot be bound by an arbitration agreement between The Art of Ventures Limited and Warren Rob Walker. Similarly, Joseph Tiptip Kamorio who is a 2nd defendant in the main suit cannot be bound by the arbitration agreement.

9. Without saying much, I make the finding that the chamber summons dated 15/7/2011 is devoid of merit. It is accordingly declined. The applicant shall bear costs of the application.

10. This application exposes our justice system to ridicule. It was filed in July 2011. It took seven years for it to be heard and determined. This kind of delay should prick the conscience of all the parties involved in this suit.

11. Lastly, the suit properties are situated in Kajiado County. There is an Environment and Land Court in Kajiado. I accordingly order transfer of this suit to Kajiado ELC for hearing and disposal.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 18TH DAY OF OCTOBER 2018.**

**B M EBOSO**

**JUDGE**

June Nafula - Court Clerk