



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MIGORI

ELC CASE NO. 829 OF 2017

ELTAS OWITI OGEKA.....APPLICANT

VERSUS

THE THIRD ENGINEERING OF CHINA CITY

CONSTRUCTIONS GROUP CO. LIMITED.....DEFENDANT

JUDGMENT

1. The plaintiff namely **ELTAS OWITI OGEKA** filed an amended plaint dated 19th October, 2017 by which he has sued the defendant, the third engineering Bureau of China City Constructions Group Co. Limited. He seeks the following orders:-

a) The agreement be declared null and void

b) The defendant plaintiff be paid at the rate of Kshs. 12,000/= (exclusive of the agricultural crops and other development thereon.) per acre month as proposed and agreed between the plaintiff and the defendant and supported by the agricultural experts and payment for all the agricultural crops, trees and fish pond be factored in and lease agreement be drawn accordingly and the amount due on the lease agreement as drawn be released fully and wholly. But the defendant be ordered to compensate and pay the plaintiff for the permanent damage caused on the plaintiff's land parcel number West Kasipul/Kotieno Kokech/84 measuring 16 acres or thereabouts before leaving and or vacating the said parcel of land.

c) Any other relief the court may award.

d) Cost of the suit.

2. The Defendant filed a defence and a counter claim dated 10th October 2017. There is no amended defence and amended counterclaim.

3. On 19th October 2017, the plaintiff filed a defence to the counter claim.

4. The matter came up on 4th December 2017 for inter parties hearing of a Notice of Motion dated 21/11/2017. The parties represented by their respective counsel agreed to refer the matter for arbitration before the County Commissioner Homa-Bay County for report on or before 11/12/17.

5. Today, the 11th day of December 2017 Mr. Jacob Otieno counsel for the applicant/plaintiff and Mr. Bagada counsel for the Respondent/Defendant urged this court to adopt consent dated 11/12/2017 by the parties as Judgment of the court.

6. I consider the consent. It reads:-

- a) The perimeter fence (barbed wire) at a cost of Kshs. 1,800,000/=.
- b) The chain link fence in 4 above at a cost of Kshs. 500,000/=
- c) Underground plumbing pipes within the camp site to be left intact.
- d) The concrete slabs and concrete structures around the office, stores, staff quarters and petrol station shall be left intact at the expiry of the lease term.

7. The consent satisfies **Article 159 (2) (b) and (c) Constitution 2010** and orders **25 (5) Civil Procedure Rules, 2010**. Parties have settled the dispute in terms of the consent. I accordingly adopt it as judgment of this court.

G. M. A. ONGONDO

JUDGE

DELIVERED, SIGNED and DATED in open court at MIGORI this **11th** day of **December 2017**.

G. M. A. ONGONDO

JUDGE

In the presence of:

Mr. Jacob Otieno counsel for Plaintiff

Mr. Bagada counsel for the Defendant

Josephine Lori – Court Assistant

G. M. A. ONGONDO

JUDGE