



**COPY**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**ENVIRONMENT AND LAND CASE NO. 106 OF 2013**

**EXQUISITE SERVICES LIMITED..... PLAINTIFF**

**- V E R S U S -**

**1. MWASHIME ALII MWAKUZIMU**

**2. SALIMU SAIDI RACHITU**

**3. WYCLIFFE GAGAI MADAGA**

**4. OKANGA & COMPANY ADVOCATES**

**5. MOGAKA, OMWENGA & MABEYA & CO ADVOCATES ..... DEFENDANTS**

**RULING**

[1] There are four applications in this case. The first application is dated 22nd May, 2013 praying for injunctive orders against the 1st to 3rd defendants. Temporary orders were granted in this application but the application itself is still pending for hearing. The second application is dated 10th June 2013 by the 4th defendant praying for stay of the proceedings and praying that this case be referred to arbitration pursuant to the agreement for sale of 1st October, 2011. The third application is filed on 2nd of July by the 5th defendant asking that the suit against Mogaka Omwenga and Mabeya be struck out and finally, the 4th application is dated 19th July, 2013 by the plaintiff for leave to amend its plaint dated 23rd May, 2013.

None of the above application has been determined. when this matter came for hearing it was pointed out to the court, that the agreement for sale dated 21st October 2011 between the parties has an arbitration clause which clearly spells out how any dispute arising out of that agreement will be settled. Parties all agreed that they have not explored that option. Arbitration is what the parties intended in their agreement. It is binding on them. Mr. Oloo Learned Counsel for the 4th defendant prayed to the Court to stay all these proceedings until the arbitration option is exhausted. He was supported by Miss. Ochieng for the plaintiff and Mr.Karega Learned Counsel for the 1st, 2nd and 3rd respondents.

[2] The Court is convinced that this is the way to go.

I will therefore order that all the proceedings herein be stayed pending arbitration as per Clause 18 of the agreement for sale herein. The status quo shall be maintained in respect of Kwale/Diani Beach Block 108

until the arbitration aforesaid is conducted or until further orders of this Court.

**Dated and delivered in open Court at Mombasa this 14th day of February, 2014.**

**S.N. MUKUNYA**

**JUDGE**

**14.2.2014**

In the presence of:

G.T.S. Were & Co. for 1st and 2nd defendants

Hamza holding brief for Oloo Advocate for 4th defendant

Nyambena advocate for 4th defendant