Muchewa Limited v Adder Company Limited (Environment & Land Case 27 of 2019) [2024] KEELC 4254 (KLR) (16 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4254 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ENVIRONMENT & LAND CASE 27 OF 2019

JA MOGENI, J

MAY 16, 2024

BETWEEN

MUCHEWA LIMITED ..... PLAINTIFF

AND

ADDER COMPANY LIMITED ..... DEFENDANT

RULING

1. The defendants have filed both a chamber summons and a Preliminary Objection dated 26/01/2024. The Chamber Summons seeks the following orders:

    1. Spent

    2. THAT there be an order to stay any other/further proceeding(s) of the suit and proceedings filed herein pending the hearing and determination of this application

    3. THAT the Honorable Court be pleased to vary and/or discharge its directions and/or orders requiring the Defendant to file defence in view of the arbitration clause subject hereof

    4. THAT this suit be struck out with costs and interest thereon or alternatively, there be an order to stay of the suit and these proceedings pending a reference to arbitration of the dispute arising between the Plaintiff and the Defendant

    5. THAT the Defendant be at liberty to apply for such further orders and/or directions as this Honorable Court may deem fit and just to grant in the circumstances.

    6. THAT the costs of this application be provided for.

2. The application is premised on the ten(a-k) grounds on the face of it and annexed affidavit of Robert Mwangi. According to them the entire suit is defective and incompetent, because it is in contravention

of an arbitration clause. According to the defendants, the arbitration clause required both parties to have the matter resolved by way of arbitration.

3. The plaintiff has opposed the Chamber Summons and grounds of opposition which I think carries an erroneous date which is 1/11/2024. A pity that the Grounds of Opposition carry a future date but the plaintiff through a three-point grounds of opposition has stated that the application is belated due to the inordinate delay on the part of the defendant to file the application. Further that it is a ploy by the defendant to delay unnecessarily the hearing.

4. The plaintiff contends that the issues in dispute are best resolved through the court and that *the Constitution* under Article 159 implores us to resolve disputes without undue consideration of technicalities.

5. At the same time defendants filed a preliminary objection which on the other hand raises a point of law. According to them this court lacks jurisdiction to hear and determine the plaintiff's suit pursuant to clause 4(i) of the Lease Agreement dated 21st December 2014 which governs both parties' relationship. According to the defendants, the arbitration clause in the signed Letter of Offer and Licence Lease Agreement of 28th November, 2014 and 21st December 2014, required both parties to have the matter resolved by way of arbitration in the instance of dispute between them.

6. Further that Section 6 of the *Arbitration Act*, 1995, Laws of Kenya empowers a court to either strike out or stay a matter brought before it and refer parties to arbitration. The plaintiff by instituting this suit has violated sections 6 and Section 7 of the same Act by not referring the dispute to arbitration as stipulated under clause 4(i) of the said Lease Agreement.

7. I have searched the court record and noted that the plaintiff only filed the Grounds of Opposition in relation to the Chamber Summons. Therefore, the preliminary objection is unopposed.

The Case for the Defendants:

8. The defendants in their preliminary objection have indicated clearly in that this court lacks jurisdiction and the matter was to be referred to arbitration as provided under clause 4 (i) of the Lease Agreement. At the time of writing this ruling they had not filed submissions in support of the preliminary objection. The signed Letter of Offer and Licence Lease Agreement at clause 4 (i) provides for arbitration in mandatory terms.

The Case for the Plaintiff:

9. The plaintiff as I have already noted has opposed the chamber summons by filing a three-point Grounds of Opposition. The preliminary objection remains unopposed. According to the plaintiff, the application is a ploy to delay the hearing of the mains suit coming too late in the day and that the issue of looking at the arbitration is paying too much attention to technicalities yet the court is implored to resolve disputes without paying too much attention to technicalities.

The Applicable Law

10. The law that applies in this case is to be found in the *Arbitration Act* Chapter 49 of the Laws of Kenya. According to the provisions of section 6 of the *Arbitration Act*, the court is authorized to stay proceedings of the suit if it is subject to an arbitration clause. It goes further to provide that this should be done at the earliest opportunity. However, there are exceptions to this rules which are not relevant to the matter in issue.

Issues for Determination:

11. In the light of what I have considered in the foregoing paragraphs, the following are the issues for determination:

    1. Whether or not this suit is governed by the arbitration clause

    2. Who should pay for the costs of this application.

Evaluation of the Evidence, Findings and the Law:

12. I have considered the pleadings of both parties. I find that the parties entered into an agreement, which contained the arbitration clause. According to the arbitration clause in the agreement for the sale of land, the parties clearly agreed that any dispute or question or matter in difference arising under the agreement were to be referred to be a single arbitrator in accordance with the *Arbitration Act* 1995 or any Act or Acts amending or replacing the same. At the same time a party is allowed to seek preliminary or injunctive relief from a court of competent jurisdiction in Kenya pending the final decision or award of the arbitrator

Disposal Order:

13. In the light of the foregoing matters, I hereby make the following orders:

    1. The preliminary objection is hereby upheld.

    2. The proceedings in this suit shall be stayed.

    3. The matter is hereby referred to arbitration.

    4. Costs of this application shall be costs in cause.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF MAY 2024

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MOGENI J.

JUDGE

In the virtual presence of:

Ms. Dida holding brief for Mr. Nyairo for Plaintiff

Ms Wangare holding brief for Mr. Kihara for Defendant/Applicant

Caroline Sagina: Court Assistant

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MOGENI J.

JUDGE