



REPUBLIC OF KENYA



**Kimiri v Irura & 2 others (Environment & Land Case
E048 of 2022) [2024] KEELC 4803 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4803 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E048 OF 2022
MN GICHERU, J
JUNE 12, 2024**

BETWEEN

WILLIAM KAGWI KIMIRI PLAINTIFF

AND

MARTHA NJERI IRURA 1ST DEFENDANT

SAFARICOM INVESTMENT CO-OPERATIVE LIMITED 2ND DEFENDANT

THE LAND REGISTRAR, NGONG 3RD DEFENDANT

RULING

1. This ruling is on the notice of motion dated 2/8/2023. The motion which is brought under Sections 6 (1) (a) and 10 of the *Arbitration Act*, Order 2 Rule 15 (b) and (d) of the *Civil Procedure* Rules 2010, Sections 1A, 1B and 3A of the *Civil Procedure Act* seeks the following orders.

1. That the court be pleased to set aside the consent order of 7th December, 2022 referring this matter to arbitration.
2. That the court be pleased to strike out the suit.
3. That the costs of this application and suit be provided for.

2. The motion is supported by an affidavit sworn by the 1st defendant dated 2/8/2023 which has two (2) annexures and six (6) grounds. In brief, the 1st defendant urges as follows.

Firstly, the sale agreement dated 9/9/2016 is *null and void ab initio* for lack of consideration and the consent to refer the matter to arbitration was on condition that the plaintiff would pay the full purchase price of Kshs. 10 million which he did not.

Secondly, as per the letter dated 22/11/2023, the sale agreement dated 9/9/2016 stands rescinded and because of this, the consent dated 7/12/2022 should be set aside.



Thirdly, there was misrepresentation of facts on the part of the plaintiff.

Fourthly, the consent order was given in error as not all the parties to this suit were privy to the agreement.

For the above and other reasons, the applicant prays that the suit be struck out.

3. The motion, though served is unopposed because the plaintiff did not file any response to it.
4. Counsel for the 1st defendant filed written submissions dated 26/4/2024.
5. I have carefully considered the motion in its entirety including the grounds, the affidavit, the submissions and the case law cited therein. I find that the motion has merit for two reasons.

Firstly, the sale agreement dated 9/9/2016 provides for arbitration through Clause 19 which states, as follows *inter alia*:-

All disputes and questions whatsoever which shall arise between the parties hereto touching on this agreement ...shall be referred to the decision of a single arbitrator to be appointed by agreement between the parties...”

It was not proper therefore to file this suit before going for arbitration.

Secondly, under Section 10 of the [Arbitration Act](#), courts should not interfere in matters governed by the Act.

For the above stated reasons, I strike out the plaintiff's suit with costs to the defendants.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 12TH DAY OF JUNE 2024.

M.N. GICHERU

JUDGE

