

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL AND TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. E240 OF 2020

BETWEEN

ELITE INTELLIGENT TRANSPORT SYSTEMS LIMITED..... PLAINTIFF

AND

GULF AFRICA BANK LIMITED.....1ST DEFENDANT

GARAM AUCTIONEERS.....2ND DEFENDANT

RULING NO. 3

1. What I have before me is Notice of Motion dated 11th February 2021 seeking an injunction restraining the Defendants from selling its tools of trade including equipment, motor vehicles, machines on its site and also dealing with the suit property; LR No. 1160/339 (Original No. 1160/178/3) pending delivery of the ruling by the Court of Appeal in **NRB CA Civil Application No. E366 of 2020, *Elite Intelligent Transport Systems Limited v Gulf Africa Bank Limited and Another***.

2. Mr Kitonyi, counsel for the Plaintiff, submitted forcefully that it is in the interests of justice and fairness to both parties that the subject matter of the suit and appeal be preserved pending determination of the application for stay in the Court of Appeal. He was of the view that the Plaintiff has established a basis for the grant of the orders since the Court of Appeal was unable to grant any orders as the order of injunction issued by this court were in force when the matter was heard in the Court of Appeal. The Plaintiff argues that the machinery and equipment is necessary for road construction which is a matter of public interest. Counsel added that monies due from the Government would in all likelihood pay off the 1st Defendant's debt hence the status quo should be maintained so as not to prejudice the Plaintiff.

3. Mr Ogunde, counsel for the Defendant, opposes the application on the ground that the application was *res-judicata* as this court has already issued an injunction pending appeal on certain conditions which the Plaintiff has not complied with. He points out that since the Plaintiff is not asking for time to comply with the condition imposed or for variation of the order, this court should not entertain this application.

4. On 21st February 2021, I allowed the Plaintiff's application for injunction pending the hearing and determination of the appeal from my ruling and order of 20th November 2021 dismissing the Plaintiff's application for an injunction pending the hearing and determination of the suit. The injunction was conditioned on the 1st Defendant paying KES 20,000,000.00 within the 21 days in default of which the injunction would stand discharged. It is thus clear that any further application for injunction pending appeal is *res-judicata* as there are no new facts that would permit the court to re-open the issue of the injunction pending appeal.

5. I am however cognizant of the fact that the ruling of the Court of Appeal is scheduled for delivery in due course. If the injunction is not granted, a decision in favour the Plaintiff by the Court of Appeal may amount to nothing without the substratum of the suit. In the interests of justice and in order to give the Plaintiff an opportunity to comply with the conditions of the injunction, I shall extend the injunction issued on 21st February 2021 for a period of 14 days only. If the Plaintiff does not comply with the conditions imposed by this court, the order of injunction shall lapse.

DATED and DELIVERED at NAIROBI this 24th day of FEBRUARY 2021.

D. S. MAJANJA

JUDGE

Court Assistant: Mr M. Onyango.

Mr Kitonyi instructed by Muraguri, Muigai and Waweru Advocates for the Plaintiff.

Mr Ogunde instructed by Walker Kontos Advocates for the Defendants.