



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

CORAM: D. S. MAJANJA J.

MISCELLANEOUS CIVIL APPLICATION NO. E934 OF 2020

BETWEEN

RAHIL INTERNATIONAL LIMITED.....APPLICANT

AND

I & M BANK LIMITED.....RESPONDENT

AND

DHANJI MANJI RAVJI.....1ST INTENDED INTERESTED PARTY

ERICK KOCH.....2ND INTENDED INTERESTED PARTY

MARCOS BRANDLISE.....3RD INTENDED INTERESTED PARTY

TORSTEIN FREDRICK KOCH.....4TH INTENDED INTERESTED PARTY

ACCELLER GLOBAL LOGISTICS...5TH INTENDED INTERESTED PARTY

RULING

1. This matter was originated by an application dated 11th August 2020 in which the Applicant sought an order in the nature of a mandatory injunction compelling the Respondent (“the Bank”) to grant access and use of funds kept in its Bank A/C No. 03801*****210 domiciled at the Bank’s Eldama Park Branch, Eldama Ravine Rd, Westlands (“the subject account”). It also prayed for an order lifting any freezing order placed on the subject account with out any valid court order and an order granting it immediate access to the said account and that the Bank be restrained from freezing the said subject account.

2. The application is supported by the grounds on the face of the application and the supporting affidavit of Applicant’s director, Duncan Deaver Achar, sworn on 11th August 2020. The gravamen of the application is that the Applicant is the holder of the subject account and that Mr Achar became aware of an email dated 26th June 2020 from the Bank informing the Applicant that the account was re-classified as an active account. It requested the Applicant conduct regular transactions in order to avoid the account relapsing to dormant mode. Following the email, the Applicant made deposits to the account which had colossal sums of money. Around 6th July 2020, the Applicant attempted to withdraw Kshs. 100,000.00 but the Bank dishonoured the cheque. The Applicant thereafter learnt that the account had been frozen without any legal justification and without any notice.

3. Before the application could be heard, the proposed interested parties applied to join the proceedings. The 1st to 4th proposed interested parties, Dhanji Manji Ravji, Eric Koch, Marcos Brandalise and Torsten Fredrick Koch, filed a Notice of Motion dated 27th August 2020 while the 5th proposed interested party, Aceller Global Logistics Limited, filed a Notice of Motion dated 31st August 2020. The application by the 1st to 4th proposed interested parties was supported by the deposition of Dhanji Manji Ravji while that of the 5th proposed interested party was supported by the affidavit of Vincent Mwaniki, its Chief financial officer

4. Apart from seeking to join the proceedings, they applied for orders restraining the Bank from facilitating any transactions from the subject account. They also applied to have the matter placed before Nzioka J., who has the conduct of ***HCCC No. 88 of 2016; Acceler Global Logistics Limited v Rahil International Limited and Another as consolidated with HCCC No. 28 of 2017, Acceller Global Logistics Ltd & Others v Rahil International Limited and Others*** (“the pending suit”).

5. All the parties filed written submissions which their advocates highlighted. It is not disputed that the money in the subject account was in fact deposited following a consent order recorded by Ogola J., on 8th April 2016 in the pending suit. Resolution of this application means this court will have to address the various contentions between the parties which are at the heart of the dispute in the pending suit.

6. To prevent a multiplicity of proceedings and since the suit is still pending determination, it is only proper that this application be placed before the judge hearing that suit to give directions on the matter as the Applicant and the proposed interested parties are parties to that suit.

7. I would only venture to state that it was improper for the Applicant to file this application as a separate matter without disclosing the existence of the pending suit and the fact that the money was deposited in the subject account pursuant to a court order in that suit.

8. The matter shall accordingly be placed before Nzioka J., on **24th September 2020** when the consolidated suits come up for directions.

DATED and DELIVERED at NAIROBI this 22nd day of SEPTEMBER 2020.

D. S. MAJANJA

JUDGE

Mr Muga instructed by Prof. Tom Ojienda and Associates for the Applicant.

Mr Wawire instructed by Wamae and Allen Advocates for Respondent.

Mr Rabut instructed by Oraro and Company Advocates for the 1st to 4th proposed interested parties.

Mr Kubai instructed by Okumu Kubai and Company Advocates for the proposed 5th interested party.