



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 65 OF 2017

TAHIR SHEIKH SAID

GRAIN MILLERS LIMITED (Under Administration).....PLAINTIFF

VERSUS

1. NIC BANK LIMITED

2. GARAM INVESTMENTS AUCTIONEERS LIMITED.....DEFENDANTS

RULING III

1. On 15/10/2018, this court having conference with the parties on the import of the dispute in these two matters made the following observations:

“This to this court is a dispute that can be resolved without production of evidence and within the same time that would be necessary to urge the application for injunction, if not shorter. However as Mr. Mugambi says he has no firm instructions, I stand over the matter to the 01/11/2018 to enable Ms. Mburu attend court and give her views. On that day let parties address the court on why application for injunction cannot be abandoned and the main suit cannot be heard by way of case stated”.

2. When parties attended court on 1/11/2018 and after the three advocates addressed the court, the court gave the following order.

“The matters as consolidated shall proceed by way of case

stated to determine question whether or not on the dates the

two suits were filed, there was consent by the administrator to sell the security. Let parties file submissions within 30 days from today and come to court on 25/01/2019 for highlighting...

FURTHER ORDERS

Let Ms. Mburu file and serve an Affidavit within 14 days from today. That be done before 15/11/2018. The parties shall thereafter file submissions within 30 days from 15/11/2018”.

3. Today after the court declined to have the matter adjourned Mr. Gikandi has sought directions that Order 35 Rule 5 be complied with before the matter proceeds.

4. This court did on 1/11/2018 direct that the dispute in the matter remains a matter of law that needs no trial by production of evidence. That order by the court remains unchallenged and to give the direction Mr. Gikandi seeks will be to have the same set aside without an appropriate application. I am hesitant to proceed so and now direct that parties address the court on the basis of affidavit on record so that the court determines the isolated issue as has been repeatedly said.

Dated and delivered at Mombasa this 25th day of January 2019.

P.J.O. OTIENO

JUDGE

Court

Ruling delivered in Court in the presence of:-

Mr. Gikandi for plaintiff in HCC 13/2018

Mr. Ngoya for plaintiff in HCC 65/2017

Miss Mburu for the defendant in both.

Hon. Justice P.J.O. Otieno J