



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
COMMERCIAL & ADMIRALTY DIVISION
CIVIL SUIT NO. 417 OF 2018

(Previously Naivasha Hcc No.9 of 2016)

EQUIP AGENCIES LIMITED.....1ST PLAINTIFF

GILGIL TREATMENT INDUSTRIES LIMITED...2ND PLAINTIFF

VERSUS

I & M BANK LIMITED.....DEFENDANT

RULING

1) The objective of a case settlement under Order 11 Rule 5 of the Civil Procedure Rules is to expedite trial by eliminating unnecessary distractions and focusing and narrowing on the matters and issues that are truly in controversy.

2) The provisions of the Rule read;-

“(1) With a view to providing an opportunity for settlement in every suit to which this Order applies the court shall within sixty days of the case conference in the case of a fast track case, and ninety days in the case of multi-track case, convene a settlement conference for the purpose of—

(a) settling the case or issues in the case; and

(b) providing the parties and their advocates an opportunity to appear before the court to settle the suit or narrow down the issues.

(2) Each party shall at least seven days before the date appointed for the settlement conference prepare and exchange a Settlement Conference Brief which should include the following—

(a) a concise summary of the facts including the agreed facts and admissions;

(b) a concise summary of the issues and the law to be relied upon by each party including their rights and interests;

(c) a final list of witnesses and a summary of each witness’s statements; and

(d) expert reports and the relevant portions of documents relied upon.

3) As would be self-evident from the Rule case settlement ought to be very early in the proceedings. For fast track cases it ought to be within 60 days of the date of presentation of the suit. Yet again for the conference to be meaningful and productive, certain material ought to be before the Court. These are set out in Sub rule 2. It is for this reason that the request for settlement of issues made by the Plaintiff made vide the Motion of 10th January 2019, is a moment too early as the parties herein have neither fully prepared nor exchanged facts, issues, matters of law arising, statements and documents contemplated under Sub rule 2. I direct that the settlement of issues be postponed to a date after the parties have duly attended to the Sub rule.

4) Perhaps it has to be stated now that I do not understand the request for settlement of issues by the Plaintiff to be a request that the dispute herein be summarily tried. This is a misplaced apprehension by the Defence. If nevertheless the settlement conference identifies certain matters that do require oral evidence and which should be determined through legal argument and without waiting final conclusion of the matter, then there will be occasion to give those directions.

5) Two other prayers remain of the Motion of 10th January 2019. One is for consolidation of this matter with **HCC. Nos. 420 of 2016 and 418 of 2018**. It is opposed by the Respondents who submit, inter alia, that the former is the subject of an undetermined Appeal to the Court of Appeal and consolidation could result in the Applicant benefitting here from any stay orders that may be granted by the Court of Appeal. There is also another development since this Court ruled on prayer 4 of the Motion on 24th January 2019. I am advised by the Applicant's Counsel that the decision is now the subject of a separate Appeal. The state of affairs is that two of the matters intended for consolidation are on interlocutory appeals. This Court prefers to leave the question of consolidation to a date after the two Appeals have been determined and when it will be clear whether the outcomes have any impact on that question.

7) As to whether the Court should order the taking of accounts prior to the hearing, I observe that this is also sought as a final order in the Plaint. This Court has not been told why that prayer should be fast-tracked. In any event how shall the accounts be conducted when certain matters including the rate/s of interest applicable, which have been raised in the suit as matters in controversy, are yet to be resolved?

8) These are the orders of Court;-

a) The parties herein shall within 14 days hereof exchange all issues, facts, matters of law, statements and documents under Order 11 rule 5 of the Civil Procedure Rules and for Case Management Conference.

b) Thereafter and within 30 days hereof, parties shall list this matter for Case Management Conference before the Deputy Registrar.

c) Prayer 2 of the Notice of Motion of 10th January 2019 is declined for now but the parties are at liberty to ask the Court to reconsider it at a later date.

d) Prayer 5 of the said Motion is dismissed.

e) As the Motion substantially fails, Costs shall be to the Respondent.

Dated, Signed and Delivered in Court at Nairobi this 25th day of April, 2019.

F. TUIYOTT

JUDGE

PRESENT:

Kingara for Plaintiff

Wawire for Respondent

Nixon – Court Assistant