

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

CIVIL CASE NO.260 OF 2017

TOTAL SURVEILANCE SECURITY LIMITED.....PLAINTIFF

VERSUS

EAST AFRICA PORTLAND CEMENT LTD.....RESPONDENT

RULING

1. Before Court is the Notice of Motion dated **10th May 2018**, by which **TOTAL SURVEILANCE SECURITY LIMITED** (the Plaintiff/Applicant herein) seeks for orders:-

“1. SPENT

2. THAT this Honourable Court be pleased to enter judgment in favour of the Plaintiff/Applicant as prayed in the Plaint.

3. THAT the costs of this Application together with those of the entire suit be borne by the Defendant.”

The Application which was premised upon **Order 2 Rule 15(1) (B) (c) and (D)** of the **Civil Procedure Rules, 2010** and **Section 1A, 1B and 3A** of the **Civil Procedure Act**, was supported by the affidavit of **EVERTON EZEKIEL TERIGIN**, the Managing Director of the Plaintiff Company.

2. The Defendant/Respondent **EAST AFRICAN PORT-LAND CEMENT LIMITED** filed Grounds of Opposition to the Application dated **27th November 2018**. The application was disposed of by way of oral arguments which were heard in open Court on **3rd December 2018**.

3. The Plaintiff/Applicant in this matter on **22nd June 2017** filed in Court a Plaint seeking judgment against the Defendant/Respondent in the sum of **Kshs.34,414,768.15**, plus interest at 14% per annum from **21-04-2017** until payment in full. On **14th August 2017** the Defendant/Respondent filed their Statement of Defence dated **4th August 2017** in which they denied owing the Plaintiff/Applicant the sum of **Kshs.34,414,768.15** and put the Plaintiff/Applicant to strict proof thereof. The Plaintiff/Applicant then filed this present application seeking to have that defence struck out and for judgment to be entered in their favour for the amount claimed in the Plaint.

4. Counsel for the Plaintiff/Applicant submitted that the defence filed on **4th August 2017**, is was a mere denial and provides no basis upon which the suit ought to proceed to full hearing. On their part the Defendant/Respondent contends that the defence raises triable issues which ought to be determined on merit after a full hearing. Counsel for the Defendant/Respondent urged that striking out was a draconian measure that ought to be reserved only for the most hopeless of cases.

5. I have considered the submissions of both counsels. I am mindful of the decision in **DT DOBIE –VS- JOSEPH MBARIA MUCHINA & ANOTHER [1980] eKLR** where the court held that:-

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment.”

I have perused the defence dated **4th August 2017**. In my view it is not so hopeless as to merit striking out. I find that the defence raises triable issues one of which is the question of whether a valid and enforceable contract existed between the parties.

6. Finally I find no merit in the present application. The same is hereby dismissed with costs to the Defendant/ Respondent.

Dated in Nairobi this 20th day of June, 2019.

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Justice Maureen A. Odera