



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL CASE NO. 240 OF 2019

STEPHEN KIPKENDA KIPLAGAT & DOROTHY CHEPKOECH KIPRONO

T/A KIPKENDA & CO. ADVOCATES.....APPLICANT

VERSUS

COASTAL KENYA ENTERPRISES LIMITED.....RESPONDENT

AND

HON. ATTORNEY GENERAL.....1ST INTERESTED PARTY

KENYA RURAL ROADS AUTHORITY.....2ND INTERESTED PARTY

RULING

1. The Applicant filed the Originating Summons herein dated 4th Nov, 2019 claiming the sum of Ksh.52,705,118.34 stated to be the balance of Legal fees payable to the Applicant by the Respondent.

2. The Notice of Motion dated 4th November, 2019 which was under certificate of urgency was filed simultaneously with the Originating Summons on 6th November, 2019. The Notice of Motion was certified urgent and prayer No. 2 allowed on interim basis pending the interpartes hearing of the application. Prayer No. 2 sought orders that:

pending hearing and determination of this application, the Respondent's Bank Account No. 1102412147 held at KCB Bank, Industrial Area Branch be frozen and the Defendant whether by itself, its agents, servants, employees and/or assigns be restrained from accessing, withdrawing, diminishing, transferring or howsoever dealing with the funds in the said Account for up to a maximum of Ksh. 52,705,118.34.

3. The Respondent Company is aggrieved by the said orders, stating that the said orders are hampering it's projects and urged the court to review the same. According to the Respondent, the Applicant is entitled to 25% of the payments made by the Interested Parties and that therefore the Applicant's entitlement out of the sum Ksh.44,310,344/= made so far is about Ksh. 11,800,000/=

4. The Applicant's contention is that 25% of the balance to be paid by the Interested Parties is Ksh.52,705,118.34 and that therefore the Ksh.44,340,344/= paid to the Respondent's Account ought to be secured.

5. The 25% of the Respondent's entitlement is based on the contingency agreement dated 14th July, 2016 between the Applicant and the Respondent as varied on 14th December, 2017 vide the Deed of Variation which in clause 1(i) states as follows:

“1. (i) The Client undertakes to pay the firm Twenty (sic) (25%) per cent of the amount recovered, after deduction of 16% V.A.T on the principal amount and 15% tax on interest on the principal amount, to cater for attorney's fees and other general disbursements connected with the recovery of the amount claimed. The firm is therefore given a *lien* on the claim or cause of action on any sum recovered by way of settlement as its fees.”

6. This court's understanding of the aforesaid agreement is that the *lien* was created on 25% of the amount of the money paid.

Consequently, on interim basis, pending the hearing of the application interparties, 25% of all the payments made to the Respondent by the Interested Parties in respect of the subject matter herein ought to be secured. Securing the payment of Ksh.52,705,118.34 at this stage would amount to securing the entire payment that the Applicant's say they are entitled to, which would mean utilizing even other deposits in the Respondent's Account over and above what has been paid by the Interested Parties.

7. In the upshot, to balance the competing interests of both parties, the orders that this court commends itself to make at this interim stage is that prayer No. 2 is hereby allowed but limited to 25% of the payments made in the account in question by the Interested Parties and any other payment made by the Interested Parties in any other account belonging to the Respondent. The orders given on 6th November, 2019 are hereby set aside and reviewed accordingly.

Date, signed and delivered at Nairobi this 26th day of Nov., 2019

B. THURANIRA JADEN

JUDGE