



Pinnacle Business School Limited v Superdrill International Limited (Environment & Land Case E011 of 2020) [2023] KEELC 21527 (KLR) (15 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21527 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E011 OF 2020
MN GICHERU, J
NOVEMBER 15, 2023**

BETWEEN

PINNACLE BUSINESS SCHOOL LIMITED PLAINTIFF

AND

SUPERDRILL INTERNATIONAL LIMITED DEFENDANT

RULING

1. This ruling is on the notice of motion dated 15/1/2021. The motion which is by the defendant is brought under order 13 rule 2 of the Civil Procedure Rules, section 3A of the Civil Procedure Act and article 40 of the Constitution. It seeks the following orders.
 - a. That judgment be entered in favour of the Defendant against the Plaintiff in terms of prayers (a) and (b) of the counter claim dated 13/1/2021.
 - b. That the costs of this application be in the cause.
2. The motion is based on two grounds and is supported by the affidavit of Joshua Kimaita Kirera, a director and shareholder of the Defendant. In summary, the Defendant is saying that the Plaintiff has admitted liability to the Defendant's claim. It did this when it admitted to have defaulted in its loan payment as per paragraph 11 of the affidavit dated 28/10/2020. The said affidavit reads as follows.

“That the Plaintiff was not able to meet their commitments under the loan agreement and effectively forfeited their rights to reversion of the properties, Kajiado/Ntashart/1577, 1578, 1581 and 471”.

It is also admitted that L.R. 1583 was used as additional security to make the Plaintiff a little bit creditworthy because despite charging the other four parcels, he was not worthy of any credit. It is the Defendant which came to his rescue but on the understanding that he would repay the fresh loan to



the bank at the quarterly rate of Kshs. 5, 749,232.00 which he failed to pay. Given the above explained circumstances, the Plaintiff has no defence to the counterclaim.

3. The motion is opposed by the Plaintiff and one of its directors and shareholders John Wainaina Gikonyo has sworn a replying affidavit dated 17/11/2021 in which he deposes as follows.

Firstly, the application is premature and an abuse of the court process as the entire suit should be heard on merit.

Secondly, there is fraud which is under investigation by the police and whose outcome may affect this case.

Thirdly, there is a pending constitutional petition filed by the applicant on 22/6/2021.

For the above stated reasons, the motion should not be allowed.

4. I have carefully considered the motion in its entirety including the grounds, the affidavits, the submissions dated 23/11/2022, 10/4/2023 and 23/9/2023 and I find that it has no merit for the following reasons.

Firstly, even though there is no evidence to prove that the Plaintiff repaid the loan to the bank as expected, there are many things that are unclear to me at this stage. For example, why was this suit filed when there were orders issued in Miscellaneous Application No. 96/2017? Were those orders not sufficient? Was there any need to file the counterclaim? Could the Plaintiff not seek to set aside the orders made in the application No. 96 of 2017 instead of filing this suit?

Secondly, how will the fraud investigations assist the Plaintiff if he never paid the quarterly instalments to the bank as required?

Finally, why have the parties filed a plethora of applications and suits while the dispute between them could have been determined in one suit?

5. These are some of the questions that this suit elicits and only a full hearing will provide answers. This court should not strike out a suit that raises more questions than answers. Let the parties provide answers to those questions. The motion dated 15/1/2021 is dismissed. Costs in the cause.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 15TH DAY OF NOVEMBER, 2023.

M.N. GICHERU

JUDGE

