



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MILIMANI HIGH COURT
CIVIL CASE NO 46 OF 2015

TATU CITY LIMITED.....1ST PLAINTIFF
KOFINAF COMPANY LIMITED.....2ND PLAINTIFF
NAHASHON NGIGE NYAGAH.....3RD PLAINTIFF
VIMALKUMAR BHIMJI DEPAR SHAH.....4TH PLAINTIFF

VERSUS

STEPHEN JENNINGS.....1ST DEFENDANT
FRANCES HOLLIDAY.....2ND DEFENDANT
HANS JOCHUM HORN.....3RD DEFENDANT
PIUS MBUGUA NGUGI.....4TH DEFENDANT
FRANK MOSIER.....5TH DEFENDANT
ANTHONY NJOROGE.....6TH DEFENDANT
CHRISTOPHER BARON.....7TH DEFENDANT

RULING

1. In a Ruling dated 4th May, 2017 I observed as follows:-

“Whilst I find that the 1st, 2nd, 3rd, 5th and 7th Defendants are guilty of Disobeying and being in contempt of the orders made in respect to the order for Audit, I direct Counsel for the parties herein to address me on which Firm should be appointed in place of PWC. This will enable Court make further Orders in regard to the order. In the meantime the Plaintiffs will have costs of the Notice of Motion of 21st September 2015”.

2. Counsel have addressed me on the question and there is consensus that a firm of Audit firm of International repute should be appointed. It is also agreed that the Chairperson of The Institute of Chartered Public Accountants Kenya Chapter (ICPAK) should appoint the Audit firm. In addition Mr. Issa for the 1st, 2nd, 4th, 5th and 7th Defendants further proposed that the Audit firm should have a global reach.

3. The Plaintiffs have, however, submitted that the firms of KPMG, PWC, PKF and Ernst & Young cannot be so appointed. These are the reasons given:-

- (a) PriceWaterCoopers have themselves asked to be excluded.
- (b) Ernst and Young are the current auditors of the 1st and 2nd Plaintiffs.
- (c) KPMG were excluded by Court on 12th June, 2015.
- (d) PKF have done a lot of consultancy work for the 1st and 2nd Plaintiff.

The 1st, 2nd, 4th, 5th and 7th Defendants were silent on the proposed exclusions. Given the foregoing, who should be the appointing authority and which firms are not eligible for appointment need not be controversial.

4. However the Court needs to observe that while addressing Court on this matter, Counsel for 1st, 2nd, 4th, 5th and 7th Defendants told Court that an audit had already been undertaken by Cedarsoc Limited. In essence, that another Audit is unnecessary. It was nevertheless conceded by Counsel that it was a matter that can be properly raised by a party to seek variation of this Courts order of 25th April 2015 which made the substantive orders for the Audit. This Court notes the issues raised but will not say more on it as the issues raised cannot preclude it from making orders on the singular question before it.

5. These are the orders of the Court:-

(i) The Chairperson of ICPAK shall within 21 days of service of this Order appoint an Audit firm of International Reputation and with a Global reach to undertake the Audit ordered by Court on 6th March 2015 and 28th April 2015.

(ii) The firm to be appointed shall not be any of the following:-

- a. PWC
- b. Ernst and Young
- c. KPMG
- d. PKF

6. Any party is at liberty to serve this order upon the Chairperson of ICPAK. Costs in the cause.

Dated, Signed and Delivered in Court at Nairobi this 22nd day of September, 2017.

F. TUIYOTT

JUDGE

PRESENT;

Havi for Plaintiffs

Busaidy h/b Issa for 1st, 2nd, 4th, 5th & 8th Defendants

N/a 3rd & 7th Defendants

Alex - Court Clerk