



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 494 OF 2017

DEREK JAMES OATWAY.....1ST PLAINTIFF

INNOVATIVE SUPPORT SERVICES LIMITED.....2ND PLAINTIFF

JAMES OUYA OMWANDO.....3RD PLAINTIFF

PATRICK GERARD GRANT.....4TH PLAINTIFF

DEREK JAMES OATWAY & ERIN VERNERIS (as Trustees of

THE PARMESAN TRUST).....5TH PLAINTIFF

VERSUS

GARDAWORLD (KENYA) LIMITED.....1ST DEFENDANT

BDO EAST AFRICA.....2ND DEFENDANT

RULING

[1] The Plaintiffs moved the Court vide the Chamber Summons application dated **11 December 2017**, seeking order, inter alia, that a temporary injunction be issued in terms of Prayer 2 thereof, to restrain the 2nd Defendant, in its role under the Share Purchase Agreement dated **1 July 2016** as the Completion Accounts Expert, from considering or otherwise issuing a determination on the purported dispute set out in the 1st Defendant's letter dated **30 November 2017** pending the *inter partes* hearing and determination of the application. The application was brought pursuant to **Section 7** of the **Arbitration Act, 1995**, and the Defendants are yet to file their responses. Thus, this Ruling is restricted to the Prayer for interim orders pending the hearing of the application.

[2] The grounds upon which the application is premised are that the Plaintiffs and the 1st Defendant executed a Letter of Intent pursuant to which the 1st Defendant agreed to purchase **Kenya Kazi Limited** (the Company) a company registered in Kenya, from the Plaintiffs on a "**cash free, debt free**" basis. Thereafter, on **1 July 2016**, the Plaintiffs and the 1st Defendant entered into a Share Purchase Agreement ("the SPA") pursuant to which the 1st Defendant agreed to purchase from the Plaintiffs the entire issued share capital of the Company. In accordance with the terms of the SPA, the 1st Defendant issued Completion Accounts to the Plaintiffs, detailing the Company's indebtedness and net working capital as of **31 December 2016**. The Plaintiffs objected to the 1st Defendant's treatment of certain financial items in the Completion Accounts, including failure to account for cash balances and the method of funding certain statutory gratuity obligations.

[3] Thus, it was the contention of the Plaintiffs that a dispute had arisen between the parties, which ought to be resolved by way of arbitration in accordance with the terms of the SPA; and that they have taken steps to have the dispute referred to the London Court of International Arbitration. However, the 1st Defendant had, in the meantime unilaterally appointed the 2nd Defendant as the Completion Accounts Expert to consider and determine the dispute and the Plaintiff contends that in spite of their objection to the process, the Defendants are determined to continue with the dispute determination exercise.

[4] The Letters marked **Annexures 7 and 8** to the Supporting Affidavit do confirm that, although the Plaintiffs objected to the expert determination process, the Defendants were resolute in proceeding with the review of the Completion Accounts. **Annexure 8** further confirms that the exercise was expected to take no more than 5 days. Thus, in his submissions before me, Counsel for the Plaintiffs intimated that the determination was due by **22nd December 2017**. Clearly therefore, the application would be rendered moot should the 2nd

Defendant proceed to make a determination as is envisaged.

[5] In the premises, I would grant orders in terms of Prayer 2 of the Plaintiffs' Chamber Summons dated **11 December 2017** and direct that a Temporary Injunction do issue restraining the 2nd Defendant, in its role under the Share Purchase Agreement dated **1 July 2016** as the Completion Accounts Expert, from considering or otherwise issuing a determination on the purported dispute set out in the 1st Defendant's letter dated **30 November 2017** pending the *inter partes* hearing and determination of that application.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF DECEMBER 2017

OLGA SEWE

JUDGE