



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
HIGH COURT CIVIL SUIT NO. 581 OF 2014

“FAST TRACK”

ABDULKADIR MOHAMED BARSALINGA

& SONS LIMITED ::: PLAINTIFF

VERSUS

VANOIL ENERGY LIMITED ::: DEFENDANT

R U L I N G

INTRODUCTION

1. The **Notice of Motion** before the court is dated **9th December 2014**. It is filed under Section 1A, 1B, 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all enabling provisions of law.
2. The application seeks the following orders:-
 1. *That this application be certified s urgent and heard ex-parte in the first instance.*
 2. *That this Honourable court be pleased to issue a prohibitory injunction against the Defendant whether by its agents or employees or any other person be restrained from removing or interfering whatsoever manner with the oil rig or any of it accessories from the drilling site pending the hearing and final determination of this application inter-partes.*
 3. *That this Honourable court be pleased to issue a prohibitory injunction against the Defendant whether by its agents or employees or any other person be restrained from removing or interfering whatever manner with the oil rig or any of it accessories from the drilling site pending the hearing and final determination of the suit.*
 4. *That a mandatory order do issue against the Defendant/Respondent to immediately pay USD 520,025.05 being the amount for services rendered by the Plaintiff.*
 5. *That the costs of this application be in the suit.*
3. The application is supported by affidavit of **Abdullahi M. Barsalinga** dated **9th December 2014** with its annexures.
4. The application is not opposed. The Applicant came to court on 10th January 2014 under Certificate of Urgency. However, the court did not grant any interim orders and directed that the application be served for a mention on 16th December 2014. The Applicant served the application upon the Respondent and filed an Affidavit of Service in court on 16th December 2014. On the 16th December 2014 when the matter came up for hearing there was no representation from the Respondent and the court directed that the application be served again for hearing on 16th January

2015. That was done by the Applicant who filed an Affidavit of Service on 16th January 2015. However, the Respondents still failed to attend court. The court adjourned the matter and directed that the same be heard on 22nd January 2015 and that the Respondents be served a third time. The Applicant served the Respondents with Notice of Hearing Notice and filed an Affidavit of Service on 22nd January 2015. On 22nd January 2015, the day for hearing the application, the Respondent failed to show up. So, I am convinced that the Respondent is either not interested in these proceedings, or that it does not oppose the orders being sought herein. .

5. The Plaintiff filed this application simultaneously with the Plaintiff demanding payment of USD 520,025.05 with interest from the Defendant. The suit is based on a contractual relationship between the Plaintiff and the Defendant. The Defendant is a Canadian Company which had been granted a licence by the Government of Kenya in the year 2013 for oil exploration in Modogshe, Garissa County. During that period the Plaintiff alleges to have supplied various goods and services to the Defendant which have not been paid for, and which this application, and the suit, now seek to secure.

THE APPLICANT'S CASE AND SUBMISSIONS

6. The Applicant's case is that on diverse dates in the year 2013 the Plaintiff/Applicant provided the Defendant/Respondent with various services including supply of local manpower, supply of water boosters, rent generators, vehicles, preparation of drilling site and construction of access roads and maintenance equipment upon the Defendant request for the same. The Plaintiff then served the Defendant with the relevant invoices annexed as **AMB 1** in the supporting affidavit of **Abdullahi M. Barsalinga**. Subsequently, the Defendant's licence was cancelled by the Government of Kenya as its permitted period for oil exploration had expired. Pursuant to that cancellation of the licence, the Defendant terminated the services of the Plaintiff and has since refused to honour the said invoices which stand at USD 520,025.05. When the Plaintiff demanded for the payment of the same the Defendant agreed to pay the invoice as follows:-

- ***Payment of a lumpsum of USD 200,000.***
- ***The balance by two (2) instalments See 'AMB 3'.***

To date the Defendant has not paid a single cent of the sums due; and the Defendant is alleged to be a foreign company and the Plaintiff is apprehensive that the Defendant will leave the jurisdiction with the outstanding sum. The Plaintiff has no security for the sum due. The only property belonging to the Defendant is the oil rig at the drillings site which this application now seeks to secure.

ANALYSIS

7. I have carefully considered the application. The application is not opposed despite being served and notice of hearing also being served. This is in itself an indication that the Respondent does not wish to challenge the application. I have also considered the invoices attached to the supporting affidavit. I have also considered annexure '**AMB3**' which is a letter dated January 17th 2015 in which the Defendant admitted liability to the Plaintiff in the total amount of USD 520,000 and agreed to make an initial payment of USD 200,000 and balance in two instalments. That was never done.
8. The Applicant now fears that the Defendant may vacate the jurisdiction of this court since the Defendant is a foreigner and has lost its permit to prospect for oil in Kenya. The only security that the Plaintiff then lay its hands on is the oil rig at the drilling site.
9. This court has the duty to protect the Applicant from the possibility that the Defendant may leave the country without paying the sums due to the Plaintiff. The sums have been admitted. The Applicant is entitled to security.

DISPOSITION

10. Pursuant to above, this court grants the injunctive order sought, but cannot grant prayer number 4,

unless there is an application for judgment to be entered on admission. The alternative is for the Applicant to proceed to formal proof and secure Judgement, I make the following orders:-

- a. *There is hereby issued a prohibitory injunction against the Defendant whether by its agents or employees or any other person restraining them from removing or interfering in whatever manner with the oil rig or any of its accessories from the drilling site pending the hearing and determination of this suit.*
- b. *Costs shall be in the suit.*

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI

THIS 27TH DAY OF FEBRUARY 2015

E. K. O. OGOLA

JUDGE

PRESENT:

M/s Kigera for the Plaintiff

No appearance for the Defendant

Teresia – Court Clerk