



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL COURTS

CIVIL SUIT NO 501 OF 2014

QUAKER VENTURES LIMITED.....PLAINITFF

VERSUS

EQUITY BANK LIMITED.....DEFENDANT

RULING

INTRODUCTION

1. The Plaintiffs' Notice of Motion application dated 5th December 2014 and filed on 8th December 2014 was brought under the provisions of Section 3A and 63

(e) of the Civil Procedure Rules (sic), Order 36 Rule 1 of the Civil Procedure Rules and all enabling provisions of the law. It sought the following orders:-

- a. **THAT Summary Judgment be entered for the Plaintiff against the Defendant for the liquidated sum of Kshs 17,000,000/= plus interest thereon at the rate of 25% per annum from 10th January, 2014 until payment in full.**
- b. **THAT costs of this suit and this application be awarded to the Plaintiff.**

3. The Plaintiffs' application was supported by the Affidavit of Patrick Sagwa Kisia, a Director in the Plaintiff company. It was sworn on 5th December 2014. The Plaintiff's Written Submissions were dated and filed on 16th February 2015.

4. It stated that the Defendant had no legal and/or contractual right to retain the funds it was claiming from it. It was its contention the Defendant had no reasonable defence to its claim as the Defendant entered appearance but failed to file a defence and therefore urged the court to grant the orders sought in its application.

5. In opposition to the Plaintiff's claim, on 23rd January 2015, John Njenga, the Defendant's General Manager swore a Replying Affidavit on behalf of the Defendant herein. The same was filed on even date. Its Written Submissions were dated and filed on 2nd March 2015.

6. The Defendant was emphatic that the Plaintiff's application was fatally and incurably defective, an abuse of the court process, misconceived, incompetent, devoid of merit and bad in law for having been filed before the close of pleadings herein. It stated that it entered appearance on 1st December 2014 and filed its Defence on 16th December 2014 as a result of which the Plaintiff's application had been overtaken by events.

7. It stated that it had an arguable defence to the suit and that the several triable issues it had raised

- required to be ventilated in a full trial. It contended that there were several facts in dispute that demonstrated that the Defendant ought to be given an opportunity to defend itself. It therefore urged the court to dismiss the Plaintiff's present application.
8. On perusing the Plaintiff's Written Submissions, it became evident that the Plaintiff was well known to this court in his capacity as a fellow arbitrator, a fact that did not come to the attention of the court at the time it reserved its Ruling or when the matter was allocated to it.
 9. Notably, Paragraph 1.2 of the said Written Submissions included description of the Plaintiff's deponent. It was stated as follows:-

“The Application is premised on the Affidavit of Qs Patrick Sagwa Kisia MCI Arb and a director of the plaintiff company. Qs Kisia is a member of the Chartered Institute of Arbitrators and a long standing Quantity Surveyor and Dispute Resolver.”

10. In view of the possible conflict of interest vis- a- vis the nature of the orders that have been sought by the Plaintiff, the court came to the conclusion that it was prudent for it to disqualify itself which it hereby does, from hearing this matter. The court did not therefore consider the merits of the same.

DISPOSITION

11. Accordingly, the upshot of this court's direction was that the Plaintiffs' Notice of Motion application dated 5th December 2014 and filed on 8th December 2014 shall be placed before the Presiding Judge High Court of Kenya Milimani Law Courts Commercial & Admiralty Division on 18th May 2015 to enable him allocate this matter to another judge in the said Division.
12. It is so ordered.

DATED at NAIROBI this 14th day of May 2015

J. KAMAU

JUDGE

DATED, READ and DELIVERED at NAIROBI this 14th day of May 2015

E.K.O. OGOLA

JUDGE