



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & ADMIRALTY DIVISION**

**HIGH COURT CIVIL CASE NO. 244 OF 2009**

**GLENCORE ENERGY U.K.  
LIMITED :::PLAINTIFF**

**VERSUS**

**KENYA PIPELINE CO.  
LIMITED :::DEFENDANT**

**RULING ON DIRECTION ON FATE OF NOTICE OF MOTION DATED 4TH AUGUST 2014**

1. The **Notice of Motion** dated **4th August 2014** was pending a Ruling of this court on 30th January 2015 when Mr. Kiche for the Applicant informed this court that the Court of Appeal was due to deliver a Ruling in this matter whose effect would most probably render the Ruling in this court on the above Notice of Motion unnecessary or an exercise in futility. Mr. Kiche then successfully urged the court to hold on the Ruling and the matter was to be mentioned on 4th April 2015 to find out about the said Ruling in the Court of Appeal.
2. On 14th April 2015 Mr. Kiche informed the court that the Court of Appeal had delivered a judgement in the matter whose effect now rendered the delivery of this court's Ruling on academic exercise. In any event Mr. Kiche submitted that they were happy with the court of Appeal judgement and that the application before this court was their application and which they were now abandoning.
3. On his part, Mr. Muchiri for the Plaintiff/Respondent submitted that the delivery of Judgement in the Court of Appeal did not have to stop this court from delivering its own ruling in the matter, and he urged the court to proceed and to deliver its ruling.
4. I have considered the opposing submissions of the parties in this matter. This is a simple matter, in my view. The Court of Appeal has rendered a judgement in the matter before the court in which judgement the Court of Appeal upheld the appeal. The appeal having been upheld, the Applicant in the Notice of Motion before this court no longer needs the orders of this court, as it now enjoys the superior orders of the Court of Appeal. The said Judgement is binding on this court. There is no further need to make a Ruling on the Notice of Motion dated 4th August 2014, except to provide for costs.
5. On the issue of costs, it is now clear that the Defendant/Applicant was running two parallel applications in two courts one in this , the other in the Court of Appeal. The Notice of Motion under reference needed not to have been filed in this court in the first instance. The Court of Appeal was already seized of the matter. By virtue of Section 3 of the Appellate Jurisdiction Act, there can be no concurrent jurisdiction by this court and the Court of Appeal. The issues in the Notice of Motion were issues which were already before the Court of Appeal and would have been determined in the Court of Appeal.
6. Pursuant to the foregoing, I order that the costs occasioned by the Notice of Motion dated 4th August 2014 shall be for the Plaintiff/Respondent and shall be paid by the Defendant/Applicant.

Orders accordingly.

**DATED, READ AND DELIVERED AT NAIROBI THIS 12TH DAY OF JUNE 2015**

**E. K. O. OGOLA**

**JUDGE**

**PRESENT:**

Mr. Muchiri for Plaintiff

Mr. Ochieng Oduol for Defendant

Teresia – Court Clerk