



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 334 OF 2013

KRYPTON TECHNOLOGY SOLUTIONS LIMITED.....PLAINTIFF

VERSUS

KENYA OFFICE PRINTING SOLUTIONS LIMITED.....DEFENDANT

RULING

1. The application before me is by the plaintiff who is seeking an order that the Defendant be ordered to provide security in the sum of Euros 52,911.25.
2. In the alternative, the plaintiff seeks warrants for the attachment of the defendant's goods or stock to satisfy the value of Kshs. 6,021,300.25.
3. In the further alternative, the plaintiff prays for warrants for the arrest of the Directors of the Defendant. The idea is that after the Directors are arrested and brought to court, they would then be required to show cause why they should not provide security to secure their appearance before the court.
4. The plaintiff also prays for summary judgment to be entered against the Defendant.
5. Finally, the plaintiff asked the court to order the Directors of the Defendant to tender into court their passports or their travel documents.
6. On the other hand, the defendant holds the view that the Plaintiff discloses no cause of action against it. Therefore, the defendant asked the court to strike out the Plaintiff.
7. The two applications were heard together.
8. The plaintiff's claim is that the defendant was to pay to the plaintiff 50% of the contractual price, immediately after the consignment of goods landed at the port of Mombasa. Thereafter, the balance of the purchase price was to have been paid after the consignment had been cleared.
9. The plaintiff says that it procured the Xerox Computer and consumables from the United Kingdom, and then packaged them into a 20 foot container, which was then dispatched by ship. The ship carrying the goods is said to have landed at the port of Mombasa on 19th December 2012.
10. Not only did the defendant receive the goods, but they are said to have used the said goods to establish an Industrial Park at the **MULTI MEDIA UNIVERSITY** in Nairobi.
11. Despite the foregoing, the defendant is said to have failed to pay any money to the plaintiff.
12. Meanwhile, one of the directors of the defendant company is said to have left Kenya, hence the need for the security which the plaintiff was asking for from the defendant.
13. That notwithstanding, the plaintiff submitted that the defendant had unequivocally admitted its liability to the plaintiff. The said admission is in the nature and form of an Affidavit sworn by RAIMOND KAIRIS, who described himself as a shareholder and former Managing Director of the defendant, **KENYA OFFICE PRINTING SOLUTIONS LIMITED**.
14. In the light of that alleged admission of liability, the plaintiff submitted that there cannot be any

- triable issues. If anything, this court was asked to grant judgment, in favour of the plaintiff, on the strength of the defendant's admission.
15. The plaintiff told the court that **RAIMOND KAIRIS** and **BEN ANYANGA** were the two directors of the Defendant; and also that the two of them owned equal shares in the defendant.
 16. Therefore, as Kairis had sworn an affidavit to confirm that the goods were received by the defendant, it is the plaintiff's case that the indebtedness of the defendant had been clearly established.
 17. Following the flight from Kenya, by one director, and in the face of blatant denials by the other director of the defendant, it is the contention of the plaintiff that unless the defendant was ordered to provide security forthwith, there might never be any assets of the defendant available after the case is determined.
 18. For that reason, the plaintiff requested that the consignment it delivered to the defendant should be preserved if the court did not feel inclined to grant summary judgment.
 19. On its part, the Defendant submitted that the plaint did not disclose any reasonable cause of action against it.
 20. The defendant asserted that there was no contract between the plaintiff and the defendant. As far as the defendant was concerned the evidence available shows that;
 - a. **RAIMOND KAIRIS** requested for the goods from the plaintiff, in his personal capacity; and
 - b. The plaintiff invoiced a company named **TEAM BOSS BALTIC**, confirming that that was the company responsible for payment; and
 - c. The Defendant's address was only used for shipping purposes.
 21. In my understanding, the defendant concedes that it had some nexus with the subject matter of the suit. However, the said nexus was neither contractual nor one in which the defendant assumed any responsibility to pay for the goods supplied by the plaintiff.
 22. According to the defendant, it only allowed the use of its address to be used for purposes of shipping.
 23. In my considered opinion it is possible that the defendant was stating the truth. However, the defendant may still have to explain the reasons and circumstances which prompted it to agree to such an arrangement. Whether such an explanation, if given, would be deemed plausible, I cannot tell at the moment.
 24. But the explanation tendered by the defendant cannot be rejected outright, without first according the defendant the opportunity to tender proof. In other words, the Defence is not so hollow as to constitute a sham. The defence is, at least, arguable.
 25. I also note that whilst the plaintiff has asserted that one of the directors of the defendant has fled from Kenya, with the intention of avoiding responsibility for the sums of money claimed by the plaintiff, the said director was actually working closely with the plaintiff.
 26. The director, **RAIMOND KAIRIS**, has sworn an affidavit to support the plaintiff's claim.
 27. In view of that fact, there appears to be a real possibility that the director was simply attempting to deflect liability from himself, to the defendant.
 28. It is also a matter of concern that whereas the plaintiff has insisted that Raimond Kairis has fled from Kenya, the said director apparently swore his affidavit before Mr. Julius Anyoka, a Commissioner for Oaths who is based in Nairobi.
 29. Furthermore, the plaintiff has suggested that the reason why some invoices were issued to **TEAM BOSS BALTIC** was that the said entity had planned to work closely with the defendant. Taken at face value, that explanation does not appear plausible. However, it is possible that if the plaintiff was given an opportunity to provide a more detailed explanation coupled with other evidence, the plaintiff could persuade the court about the precise role which **TEAM BOSS BALTIC** played in the whole transaction.
 30. The defendant has two directors, who also hold equal shares in the company. One director says that the company was never a party to the contract with the plaintiff, whilst the other director says that the defendant entered into a contract with the plaintiff.
 31. Given the set – up of the defendant company, the court would definitely need much more evidence from both the parties, in order to get to the bottom of the matters in issue.
 32. In other words, there is neither an unequivocal admission from the defendant nor sufficient

- evidence to justify the grant of summary judgment in favour of the plaintiff.
- 33.If the goods had already been used either at the Multi Media University or elsewhere, that would imply that the goods were already in the hands of Third Party. In those circumstances, the court could not make orders that would directly or indirectly affect a person who was not given a hearing in this case.
- 34.It is noteworthy from paragraph 16 of the Affidavit of **RAIMOND KAIRIS** that he expressly acknowledged the lack of a formal agreement concerning the consignment with Krypton Technology Solutions Limited. That is yet another reason why this court finds that the case by the plaintiff is not so plain and obvious as the plaintiff had suggested.
- 35.Another noteworthy statement from Raimond Kairis (at paragraph 23 of his affidavit) was as follows;

“THAT it is not true that I have fled Kenya due to indebtedness of the Kenya Office Printing Solutions Limited, and I left to concentrate with my business in Riga and I am willing to testify in court if need be”.

- 36.Through that statement Raimond Kairis cast doubt upon one of the reasons which the plaintiff had advanced for having asked the court to order the defendant to provide security.
- 37.In the final analysis, both the applications herein are without merit. I therefore dismiss the applications dated 26th June 2013 and 30th August 2013, respectively. Each party will bear its own costs.

DATED, SIGNED and DELIVERED at NAIROBI this 20th day of November 2014.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

.....for the Plaintiff

.....for the Defendant

Collins Odhiambo – Court clerk.