



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**CIVIL SUIT NO. 73 OF 2013**

**SOUTH SHORE INTERNATIONAL LIMITED.....PLAINTIFF**

**VERSUS**

**TALEWA ROAD CONTRACTORS LIMITED ..... DEFENDANT**

**RULING**

This Notice of Motion application is brought to Court pursuant to order 40 rules 1 and 4 and order 51 rule 1 and order 26 of the Civil Procedure Rules and Section 1A, 2A and 3A of the Civil Procedure Act.

It seeks orders;

1. Spent
2. Spent
3. That this Court be pleased to issue an order directing that the 21 Bitutainers belonging to the Applicant be kept in the custody of Misa Mogaro Auctioneers an officer of this Court pending the hearing and determination of this suit and in the alternative
4. An order directing that the 21 Bitutainers be put in the custody of the Applicant pending hearing and determination of this suit.
5. An order to issue directing the Respondent to provide Ksh. 48,048,000/= being the sum claimed by the applicant in the suit filed herewith and security for costs of Ksh. 2 million pending hearing and determination of this suit failure to which summary Judgment to be entered against the Respondent and
6. That the O.C.S Changamwe Police Station do ensure compliance of this order.

The grounds which are found in the body of the application are that;

1. The Respondent has intentionally refused to pay the Applicant Ksh. 48,048,000/= being the cost of 462 tonnes of Bitumen supplied to it by the Applicant and release the 21 Bitutainers belonging to the Applicant.
2. That the Respondent's yard where the applicants Bitutainers are stored has been taken over by a third party Kenya Highways Authority thus the security of the Applicants 21 Bitutainers are in danger of being damaged, wasted or even being alienated by a third party to this suit.

I have heard Counsel for the applicants oral submissions and perused the Supporting affidavit of

Simon Muchene the Managing Director of the plaintiff company and the annexures thereto and in particular Annexure marked 23 which is a letter dated 10th June, 2013 addressed to Mr. Simon Muchene by one of the Directors of the Defendant company one Mr. John Wainaina where at paragraphs 5, 6, 7, 8 he concedes the presence in their yard of 21 containers of Bitumen belonging to the plaintiff which should be collected upon payment of storage charges.

I am satisfied that the applicant has a prima facie case in respect of the 21 containers of Bitumen and the balance of convenience tilts to there being conservatory orders as there is real danger that the goods could be wasted and or alienated by the taking over of the Defendants yard by Kenya Highways Authority as contended by the Applicant.

Prayer 5 would amount to a determination of the suit at this interlocutory stage. I decline to grant it at this stage.

The upshot is that prayer 3 of the application which seeks to have the 21 Bitutainers kept in the custody of Misa Mogaro Auctioneers is granted as prayed.

Further, the O.C.S Changanwe Police Station to ensure compliance of this order. Costs in the cause.

Ruling dated and delivered in open Court this **28th** day of **June, 2013**.

**M. MUYA**

**JUDGE**

**28TH JUNE, 2013**

**In the presence of :-**

Mr. Egunza for the applicant

Court clerk Musundi