

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
COMMERCIAL DIVISION
CIVIL SUIT NO. 36 OF 2013

CIVICON LIMITED PLAINTIFF

V E R S U S

KIVUWATT LIMITED DEFENDANT

RULING

1. The Plaintiff has moved this Court by Notice of Motion dated 6th September 2013. In doing so the Plaintiff has invoked the Court's inherent power seeking that the Court would settle the terms of the extracted order of the Ruling of this Court in this matter of 28th August, 2013. That Ruling dismissed the Plaintiff's application for injunction pending appeal.
2. Section 2 of the Civil Procedure Act Cap 21 defines an order as “**the formal expression of any decision of a Court which is not a decree and includes a rule nisi.**”
3. Following the delivery of the Ruling of 28th August, 2013 the Defendant extracted an order which was issued by this Court on 30th August 2013. The dispute that this Court is called upon to determine is whether the inclusion of the words in order number one (1) of that order are reflective of the Ruling. That order number one (1) is in the following terms “**The Plaintiff has no lien upon the Separator which belongs to the Defendant.**”
4. The Plaintiff argued that the Court did not make a determination in its Ruling of 28th August, 2013 on whether it had a lien on a machine called Separator.
5. The Defendant submitted that the Plaintiff in seeking an injunction pending appeal was asserting alien over the machine. That both the parties in their submissions before Court referred to the issue of lien.
6. My task is simply to settle Order number one (1) of that order extracted by the Defendant. Paragraph 23 of the Ruling of 28th August, 2013 made a determination that the machine called the Separator belongs to Kivuwatt Limited. The Court also noted that the Defendant was claiming alien over that machine. The Court did not determine whether or not the Plaintiff had a right to claim alien over that Separator and accordingly Order number one (1) requires amendment. That order should read as follows-

“That the Separator belongs to the Defendant.”

7. That amendment will not affect Order numbers two (2) to four (4) as extracted because those orders reflect the Ruling of 28th August 2013.
8. I make no order as to costs of the Notice of Motion dated 9th September 2013.

Dated and delivered at Mombasa this 23rd day of September, 2013.

MARY KASANGO

JUDGE