



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 79 OF 2010

BM LOGISTICS LTD.....PLAINTIFF

VERSUS

KENYA NATIONAL BUREAU OF STATISTICS.....DEFENDANT

AND

BULK MOVERS AND LOGISTICS (EA) CO. LTD.....INTERESTED PARTY

RULING

1. The Application before me is the Defendant's Notice of Motion dated **22nd April 2013** and filed in Court on even date. It is expressed to be brought under **section 23** of the **Constitution** and **sections 3A & 6** of the Civil Procedure Act. By the said Application, the Defendant prays for orders that the Court be pleased to stay proceedings in this matter pending the hearing and determination of Nairobi Anti Corruption Court Case No. 11 of 2012.
2. The Application is supported by the affidavit of **ZACHARY MWANGI** sworn on **19th April 2013** and is based on the grounds stated on the face thereof.
3. Briefly, the Plaintiff filed the current suit against the Defendant on 12th February 2010 claiming damages for trespass to the go-down in LR 209/10807. The suit herein was scheduled for hearing on **2nd May 2013**. Prior to the said hearing the Defendant filed the current application seeking to stay the proceedings herein pending the hearing and determination of the aforesaid Nairobi Anti Corruption Case.
4. In his supporting affidavit sworn on behalf of the Defendant, Mr. Mwangi states that two officers of the Defendant were charged in Nairobi Anti Corruption Court Case No. 11 of 2012, which officers are the witnesses of the Defendant in this matter. He further states that the main issue in this case as is being pursued by the Plaintiff in both the criminal and civil case relates to procurement of the go-down.
5. It is the deponent's position that the evidence being tendered at the Anti-corruption court shall be crucial in the current civil case. He stated that the Anti-corruption case was set for hearing on **26th/29th/30th April 2013** and **22nd/23rd/28th and 29th May 2013**.
6. He avers that this Court has powers to stay proceedings in this matter pending the hearing and determination of the Anti Corruption case and that the Application is made in good faith and in the interest of justice for the accused persons as well as the Defendant.
7. The hearing of the Application was on **4th November 2013** with Mr. Omosa appearing for the

- Defendant while Mr. Gitonga appeared for the Plaintiff. Mr. Omosa relied entirely on the application dated 22nd April 2013 as well as the supporting affidavit of Zachary Mwangi sworn on 19th April 2013 and prayed that the Court grant the prayers sought.
8. The Application was opposed by Mr. Gitonga who submitted that the same had no precedent in law to the extent that it sought to stay the High Court case pending resolution of a criminal case in the subordinate court. It was his submission that on that ground alone, the application should be disallowed.
 9. It was also his submission that since the application was filed on the eve of the hearing of this matter the same was done in bad faith. He further submitted that there was no suggestion that the accused persons in the criminal case could not come to testify in the current suit since they were out on bond.
 10. In reply, Counsel for the Defendant submitted that the Court had discretion to grant the orders. He also informed the Court that the criminal case was already being heard.

ANALYSIS

11. The Applicant has contended that the witnesses for the Defendant in this Case are the same persons charged in the Anti-Corruption case and that the proceedings of both cases simultaneously shall prejudice both the witnesses and the Defendant.
12. To begin with, it is not clear how the case against the officers of the Defendant (the witnesses herein) is related to the case against the Defendant. The Case against the said officers is a criminal one whereby the said officers have been charged with corruption while the current one is a civil one where the Defendant has been sued for trespass by the Plaintiff. The Defendant did not substantiate how the proceedings and evidence in the Criminal case against the said officers would aid its case in the current matter. In that case I cannot comprehend how the proceedings and consequently the outcome of the case against the said officers will affect the current suit against the Defendant. In any case, the Defendant is a separate entity from its officers (the witnesses herein) charged in Nairobi Anti Corruption Case No. 11 of 2012.
13. It is also the applicant's contention that the proceedings and evidence, documentary and oral, in the criminal case shall be crucial evidence for this Civil Case. In that regard, it is my view that the Defendant is at liberty to produce all evidence, including evidence to be adduced in the said criminal case in support of its current case before this Court. Thereafter, the Court will carefully consider the evidence in a competent and independent manner in coming up with a Judgment.
14. With regard to the proceedings in both cases, there is no bar to the witnesses to come and testify independently in support of the Defendant's case. It is highly unlikely that the hearing of the criminal case at the anti Corruption Court will coincide with the hearing of this matter. In any case, Counsel for the Applicant indicated that the criminal case was already being heard. In the circumstances I do not foresee any prejudice being occasioned to the Defendant or to the said officers.
15. I am alive to the fact that stay of proceedings is at the discretion of the Court. However the said discretion should be exercised judiciously and within the law. This Court is also enjoined under Section 1A of the Civil Procedure Act to facilitate the just and expeditious resolution of civil disputes. **In the matter of global tours & travel ltd, Winding up cause no.43 of 2000 at Nairobi (unreported)** the Court held that:-

“In deciding whether to order a stay [of proceedings] the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters it should bear in mind such factors as the need for expeditious disposal of cases.....”

16. Having made the above findings, it is my opinion that staying the proceedings herein will only aid in the unnecessary delay of hearing and disposing of the case.
17. In the upshot, the order that commends itself to this Court is to dismiss the Defendant's Notice of Motion dated 22nd April 2013 and filed in Court on even date. The Costs of this application shall be for the Plaintiff/Respondent.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI THIS 10TH DAY OF DECEMBER 2013

E. K. O. OGOLA

JUDGE

In the presence of:

M/s Nyawira holding brief for Gitonga for the Plaintiff

Omosa for the Defendant

Teresia - Court Clerk