

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 675 of 2008

ALLIANCE MEDIA KENYA LTD. PLAINTIFF

VERSUS

SPORTS STADIA MANAGEMENT BOARDDEFENDANT

R U L I N G

Application dated 14/11/08 brought under **Section 63, Civil Procedure Act** and **Order 39 Rules 1, 2, 3 and 9, Civil Procedure Code** and **Arbitration Act**. Orders sought are:-

- 1. Pending the appointment of arbitrator and his determination of the dispute, the defendant be restrained from determining or rescinding the agreement of In-door Advertising dated 25/1/2007 and agreement for provision of Outdoor Advertising dated 25/1/2007;**
- 2. And defendant be restrained from interfering, trespassing, alienating or dealing in any way with plaintiff's sites, billboards, advertising space to 3rd parties or in any way whatsoever and defendants be restrained from breaching the terms of the said agreements. And plaintiff do give undertaking as to damages.**

The grounds on which the application are based are stated namely;

that a dispute has arisen between the parties and the aforesaid agreement have made provision for the resolution of any disputes arising be referred to arbitration and notwithstanding the defendant has threatened to breach the agreements.

The application is supported by affidavit sworn by Jacqueline Nkatha Kiao. It is sworn that the plaintiff deals in the selling of both indoor and outdoor advertising space, including bill boards and banners. The defendant is a State Corporation charged with the management of all national sports stadia. That by two agreements dated on 25/1/2007, the plaintiff and defendant agreed that the defendant would in respect of outdoor advertising lease advertising space to the plaintiff at the rent of Kshs.350,000/= or 40% of the monthly revenue realized by the plaintiff from selling advertising space. And that the plaintiff would have the right to sell the naming rights of the (2) stadia and share the revenue realized and in event of breach the agreement would be terminated by giving 7 days' notice but the plaintiff would be given an opportunity to rectify the breach.

In the event of a dispute arising, the matter would be referred to arbitration. Regarding the indoor advertising against:-

- 1. Monthly payment was Kshs.100,000/=.**
- 2. The defendant would be at liberty to sell unsold indoor advertising space in the event the plaintiff failed to do so, and in event of a dispute arising the matter would be referred to arbitration.**

The plaintiff has complied with all payments as evidenced by exhibit "JNK 2". Signs in respect of stadiums have not been installed as the defendant has yet to approve the same. The plaintiff has requested that dispute be referred to arbitrator under Clause 15. If the defendant is not restrained, the plaintiff will

suffer substantial losses since it already has entered into agreements with third parties. Further affidavit attaches several payments due to the defendant.

In reply, the defendant has caused an affidavit to be sworn by Samuel Alari Mwai in which the defendant admits the 2 agreements in which there is contained an arbitration agreement. The defendant swears that it is the plaintiff who is in breach and has set out several alleged breaches. However, these are disputed matters which have been place before the arbitrator for decision. Pending before or during arbitral proceedings, a party who feels threatened may invoke **Section 7** of the **Act** for interim measures of protection from the High Court.

It is my finding then that this application is competent. Upon reading the application and affidavits filed by both parties, it is clear that the defendant is bent on committing breach of the two contracts it has entered into with the plaintiff. I am convinced that such breach shall cause serious loss of money and business reputation. I therefore allow the application and grant orders as prayed in application dated 14/11/2008.

The plaintiff shall file a written undertaking signed by its directors within the next (7) seven days. Costs to the applicant.

Orders accordingly.

DATED, SIGNED and DELIVERED at Nairobi this 26th day of October 2009.

JOYCE N. KHAMINWA

JUDGE