

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

Commercial Civil Case 1 of 2004

CLEARSPAN CONSTRUCTION (A) LIMITEDPLAINTIFF

VERSUS

EAST AFRICAN GAS COMPANY LTD.DEFENDANT

R U L I N G

On the 14th day of June 2007, this court directed that the Notice of Motion dated 21st September 2006 be heard first. The motion is taken out by the defendant pursuant to Section 3 and 3A of the Civil Procedure act, Order I rules 3,10,10A,11, 13, 16A of the Civil Procedure Rules and under sections 3 of the Judicature Act and the government Proceedings Act. In the motion, the defendant seeks for the Government of Kenya

joined to the proceedings as a party on the basis that she is the majority shareholder in Kenya Pipeline Company Limited. The motion is supported by the affidavit of Elijah Omolo Ongere, an officer said to be in charge of operations and supplies at the Defendant Company. It is the submission of Mr. Katwa, learned advocate for the defendant that the Government is a necessary party within the meaning of the Civil Procedure Act, State Corporations Act and Government proceedings and in view of the fact that the proceedings involve government assets and equities.

The application is strenuously opposed by the plaintiff on reliance of the replying affidavit of Antony Dickenson. It is the submission of Mr. Kingi learned Advocate for the plaintiff that the motion should be dismissed on the basis that the Kenya Pipeline Company Limited is no longer a shareholder in the Defendant Company having withdrawn its shares in the year 2000. It is also argued that even if Kenya Pipeline Company Ltd was still a shareholder of the defendant Co. still the government cannot be joined because the Kenya Pipeline Company has the capacity to sue and be sued. The shareholders are different entities.

I have considered the able submissions tendered by learned counsels on both sides. I have also perused the material placed before this court. If I understood well the submissions of Mr. Katwa, learned defendant's counsel, it is his argument that because the Government is the majority shareholder in Kenya Pipeline Company Ltd, she should be enjoined as a party to this suit. My understanding of the law is that Kenya Pipeline Co. Ltd. is a limited liability company which has the capacity to sue and be sued. The company is a separate entity from its shareholders.

For the above reason alone, I dismiss the motion with costs to the plaintiff.

Dated and delivered at Mombasa this 7th day of September 2007.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Kiarie Kariuki h/b Katwa & Kemboi for the defendant/Applicant and Mr. Njeru for plaintiff.