



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 103 of 2006

CONTE DESIGN KHALWAPLAINTIFF

VERSUS

KENYA SUGAR RESEARCH FOUNDATION1ST DEFENDANT

KENYA SUGAR BOARD2ND DEFENDANT

RULING

The Applicant applies in its Chamber Summons of the 9/3/2006 for inter alia the following orders:-

2. The Respondents by themselves their Agents, servants or whom someone construction acting for them be restrained from the process of tendering and or advertising for “request of expression of interest for provision of consulting services for design and construction works as advertised in the Daily Nation Newspaper of 21st February 2006 till the hearing and final determination of the application interpartes.

3. The Honourable court be pleased to restrain the Defendants, their servants, and/or Agents from proceeding on with the tendering procedure till the hearing and final determination of the case.

The application is brought under the provisions of Order 39 Rule 2(1) (2) and (9) of the Civil Procedure Rules.

In order to succeed the Applicant must show that the Respondents/Defendants are likely to commit a breach of contract or other injury.

The complaint of the Applicant is that it alleges it was employed by the 1st Defendant to undertake professional work on its behalf. Although the Plaintiff seeks relief against both Defendants there is no cause of action, in the body of the Plaintiff, shown against the 2nd Defendant.

The Applicant relies on its supporting affidavit and the documents annexed thereto.

Assuming for the purposes of the application that the 1st Defendant did employ the Plaintiff in a professional capacity, the grievance of the Plaintiff appears to be related to the fee notes it has sent to the first Defendant as well as the 2nd Defendant.

What the Applicant wants to do is to restrain the Defendants from tendering or proceeding with the

tendering process until the final determination of this case.

The Applicant says that what is being tendered for is the same work that it was asked to do and has finished doing.

The tender advertisement is in the name of the 1st Defendant and as such no orders can in any event be sought against the 2nd Defendant.

Leaving that aside, as the dispute which the Applicant has with the Defendants is in respect of its fees, I cannot see that the tendering process invoked by the 1st Defendant can in any way constitute a breach of contract between it and the Second Defendant or cause it any other wrong. The remedy of the Plaintiff is to sue for the sum it claims due.

In the result, the Applicant has failed to show that it has a prima facie case for the relief claimed against the Defendants and as such I dismiss this application with costs.

Dated and delivered at Nairobi this 27th day of March 2006.

P. J. RANSLEY

JUDGE