



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 306 of 2005

KIENZECO LIMITED.....
PLAINTIFF

VERSUS

KENATCO TAXIS LIMITED (IN RECEIVERSHIP).....
.....DEFENDANT

RULING

The brief background of this matter is that the plaintiff and the defendant entered into an agreement whereby the plaintiff agreed to buy and the defendant agreed to sell its assets.

The plaintiff paid kshs 4, 020, 000 to the defendant as a deposit.

On 6th June 2006, an interim injunction was granted to the plaintiff restraining the defendant from selling its assets pending determination of the suit.

The plaintiff has now filed an application by Notice of Motion brought under section 3A of the Civil Procedure Act. The application seeks that the deposit being held by the defendant, namely kshs 4, 020, 000, be deposited in interest earning joint account of the counsels appearing hereof, or in alternative it be deposited in an escrow account in a reputable bank.

The plaintiff based its application on the ground that; the plaintiff's prayer to run the defendant company, jointly with the defendant was declined by the court; that since the defendant company is in receivership, the plaintiff is apprehensive that the aforesaid deposit may dissipate.

The defendant opposed the application on the basis that the prayers are in consistent with the pleadings. That the plaintiff failed to pay the balance of the purchase price and is accordingly in breach and that the plaintiff's deposit is protected by the interim injunction in place.

The court has considered the arguments for and against the application. The defendant's argument that the prayer sought is at variance with the pleadings is not well taken. The plaintiff has moved under section 3 A of the Civil Procedure Act and accordingly the court can invoke its inherent power as may be necessary for the end of justice to be met. The defendant does not deny that the plaintiff has paid the deposit and accordingly the end of justice would require, that until the court does finally determine the

right of the parties, in this action, the deposit as aforesaid be safe guarded. The court for that reason will accede to the application and grants the following orders: -

(1) That the deposit amount of kshs 4, 020, 000 be deposited in a joint interest earning account in the names of, ODERA OBAR & COMPANY ADVOCATES, and NDERITU & PARTNERS, until further orders of this court.

(2) If the aforesaid advocates are unable to agree where that deposit should be put, the court shall nominate a bank on application.

(3) That the costs of the application dated 15th June 2006 shall be in the cause.

MARY KASANGO

JUDGE

Dated and delivered this 14th July 2006

MARY KASANGO

JUDGE