

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Civil Suit 262 of 2006

MAT INTERNATIONAL LIMITEDPLAINTIFF

VERSUS

TANA AND ATHI RIVERS DEVELOPMENT AUTHORITY..DEFENDANTS

RULING

On 21/11/2006, this court gave an ex parte order of injunction restraining the defendant from breaching by terminating the joint venture agreement of 14/9/2005 and from further entering into any agreement with third parties in derogation of the terms of the aforesaid agreement. In an ex parte motion dated 30th November 2006, the defendant obtained an ex parte order staying the order of injunction on 1.12.2006.

The motion dated 30.11.2006 and the Chamber summons dated 21.11.2006 have been fixed for hearing inter partes on 9/2/2007.

The dispute now which must be determined is what will happen to the orders of injunction of 21.11.2006 which were stayed by an order of this court on 1.12.2006. It is the submission of Mr. Gatonye learned advocate for the defendant that the order should subsist until the inter partes hearing of the applications. On his part Mr. Paul Mwangi learned advocate for the plaintiff is of the view that the ex parte order of injunction should be re-instated.

It is the submission of Mr. Gatonye that there was no joint venture agreement for the development of rice irrigation project between the parties hence there is nothing to restrain. It is however conceded that the defendant terminated a joint venture agreement between it and the plaintiff on 14.9.2006 and entered into another one with Mumias Sugar Co. Ltd. On 16.10.2006. What is clear is that there existed a joint venture agreement between the parties as of 14.9.2006. The contents and its substance will come out clearly during the substantive hearing of the applications. The parties seem to be in a hurry to have deal struck in the earliest time possible.

What is apparent is that there was a draft agreement in respect of rice irrigation Project which was not executed. What was executed and terminated was that which related to sugar. The ex parte order of injunction only related to the development of rice. However, the plaintiff talks of both rice and sugar irrigation projects.

It would appear the defendant prompted the plaintiff to carry out feasibility studies on the development of a rice irrigation project on the basis of a draft agreement and oral representations.

It would appear the concern of the defendant is the sugar project. The order issued on 21.11.2006 related to the rice irrigation project. It is the submission of Mr. Gatonye that the order will paralyse the entire project. I do not see how the ex parte order of 21.11.2006 would frustrate the sugar irrigation project. There is no order sought to restrain the carrying out of the aforesaid project. There is a possibility that the plaintiff is likely to establish that there was a concrete agreement relating to the rice irrigation project. I think it is only fair and just to preserve the status quo by reinstating and extending the orders of 21.11.2006 up to 9/2/2007 when the applications are scheduled for hearing inter partes.

In effect the order of 1.12.2006 staying the order of 21.11.2006 is set aside. It is open for any aggrieved party to apply for the hearing date to be brought forward from 9/2/2007 to any date before the duty judge.

Dated and delivered this 15th day of December 2006.

J.K. SERGON