

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 90 OF 2003

GREEN PALMS INVESTMENTS LTD.....PLAINTIFF

V E R S U S

KENYA PIPELINE COMPANY LTD.....DEFENDANT

R U L I N G

The Plaintiff/Applicant filed a Complaint against Defendant claiming Kshs.26,384,800/-, a liquidated demand, plus costs and interest. The cause of action is said to have arisen out of agreement pleaded under para.4 of the Complaint, namely, to render some services and work performed by Defendant in connection with obtaining title to some property referred to as ***“KPC’s Kipevu Oil Storage Facility Mombasa”***.

The Plaintiff/Applicant submitted his invoice for payment but the Defendant has failed to pay hence this application for summary judgment in the said sum. The application is supported by the Affidavit of Managing Director Daniel Kihiko who in addition appeared for cross-examination. The application is opposed by the Defendant who has filed a Replying Affidavit sworn by Mary Kiptui.

I have perused the statement of defence filed on 22/5/03. It is clear that there are major disputes as to the services rendered and work done. There is also dispute as to how the claim was assessed. There is also dispute between the Defendant and the Third Party. In view of the large amount claimed and the pleaded illegality I am of the view that this is a case that should proceed to trial where both parties shall have full opportunity to call their witnesses.

On perusing the evidence laid before the court it is not clear how the said claim was arrived at and further more he does not show any proof of the terms of contract or the work done and services rendered. The Defendant is a public body and it could easily be manipulated by disloyal employees as pleaded in the defence.

For these reasons I dismiss application and award costs thereof to the Respondent.

Dated at Mombasa this 2nd day of March, 2004.

JOYCE KHAMINWA

J U D G E