



**Jeevaka Engineering Solutions Private Limited v Timber
Treatment International Ltd & 2 others (Civil Case E097 of 2024)
[2024] KEHC 12834 (KLR) (Commercial and Tax) (18 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12834 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E097 OF 2024
FG MUGAMBI, J
OCTOBER 18, 2024**

BETWEEN

JEEVAKA ENGINEERING SOLUTIONS PRIVATE LIMITED APPLICANT

AND

TIMBER TREATMENT INTERNATIONAL LTD 1ST RESPONDENT

STEAM ON HIRE (EA) LTD 2ND RESPONDENT

NEW KENYA CO-OPERATIVE CREAMERIES LTD 3RD RESPONDENT

RULING

1. The plaintiff filed the application dated 27th February 2024 under Order 40 Rules 1 and 2 of the [Civil Procedure Rules](#). It seeks a temporary injunction restraining the 1st and 2nd defendants from applying and using its biomass energy concept in their steam supply business and from accessing the plaintiff's steam plants. The plaintiff also seeks to have the 3rd defendant enjoined from making any payments to the 1st and 2nd defendants with respect to steam supply, pending hearing and determination of this suit.
2. The application is premised on the grounds that the 1st and 3rd defendant entered into a contract dated 30th June 2014 by which the 1st defendant was to supply steam to the 3rd defendant. By dint of the said agreement the 1st defendant was at liberty to engage any other party to enable it perform its obligations under the contract. Consequently, the 1st defendant entered into subsequent agreements with the 2nd defendants and also sub contracted the plaintiff to supply steam to the 3rd defendant.
3. The terms of the agreement between the plaintiff and the 1st defendant were that the 3rd defendant would make payment to the 1st and 2nd defendants, whereupon the 1st and 2nd defendants would deduct



the operating costs and then remit to the plaintiff ¹/₃ of the net profit. The 1st and 2nd defendants relied on the plaintiff's biomass energy concept in supplying the steam.

4. The plaintiff's claim is for Kshs 32,169,187/= which it contends is ¹/₃ of the net profits based on the supplies of Kshs 156,038,907.89 made to the 3rd defendant. While the monies were still outstanding, the 1st and 2nd defendants terminated their agreement with the plaintiff. The plaintiff further contends that even then, the 1st and 2nd defendants continue to supply the 3rd defendant with steam, while making use of the plaintiff's concept.
5. The application is opposed by the 1st and 2nd defendants, who acknowledge that they are in the business of steam supply. They do further acknowledge that they have a tender to supply steam to the 3rd defendant since 30th June 2014. They contend that the concept used for producing the steam is not a unique process and that there is no evidence produced by the plaintiff to show that the concept is a registered industrial design or patent. They claim that the same is well known and widespread and they should therefore not be enjoined from its use.
6. Further, the defendants plead with this court not to bar them from accessing the steam plants as the same would cause substantial loss to them and the 3rd defendant.

Analysis and determination

7. I have carefully considered the pleadings, submissions and evidence presented by the parties. The issue for determination is whether the plaintiff has met the threshold for the grant of the injunctive orders sought as set out in the landmark decision in *Giella v Cassman Brown & Co Ltd*, (1973) E.A 385.
8. At page 360 Spry J. set out the conditions for such grant as follows:

“First, an applicant must show a *prima facie* case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide an application on the balance of convenience.”
9. The law is that an applicant must meet all the three requirements before the order is granted. The conditions are to be applied as separate, distinct, and logical hurdles the applicant must surmount sequentially.
10. On the first ground, the plaintiff submits that it has established a *prima facie* case, a submission that is denied by the defendants. As set out in *Mrao Ltd v First American Bank of Kenya Ltd & 2 others*, [2003] eKLR, a *prima facie* case is, simply put, an arguable case in which there is evidence of an infringement, with a probability of success of the applicant's case, at trial. In determining whether the Plaintiff has established a *prima facie* case, in *Nguruman Ltd v Jan Bonde Nielsen & 2 others*, [2014] eKLR, the Court of Appeal cautioned that:

“In considering whether or not a *prima facie* case has been established, the Court does not hold a mini trial and must not examine the merits of the case closely. All that the court is to see is that on the face of it the person applying for an injunction has a right, which has been or is threatened with violation.”
11. I have looked at the evidence on record and particularly the contract dated 9th February 2016 between the plaintiff and the 1st defendant. The contract provides the terms of payment at clause 3 thereof,



and provides that the plaintiff would be paid $\frac{1}{3}$ of the net profit of any steam related contract after deduction of operational costs.

12. I find no provision in the contract where the parties agreed that the plaintiff would have exclusive ownership of the steam plant. Similarly, the plaintiff has failed to provide any evidence to substantiate its claim of intellectual property rights over the steam plant, which it seeks to prevent the 1st and 2nd defendants from accessing. On the other hand, the defendants assert that they terminated the contract in accordance with Clause 8 of their agreement. I note that indeed, either party was at liberty to terminate the agreement.
13. As to whether there was breach of the agreement is a matter that will require further intervention at a substantive hearing. Although I note that the defendants have not denied that they do owe the amounts claimed by the plaintiff, the consequence of the orders sought is what I am not convinced should automatically issue and at this interlocutory stage.
14. On irreparable harm, I am inclined to agree with the 1st and 2nd defendants' submissions that the plaintiff has not established irreparable harm that cannot be compensated by an award of damages. The claim before the court is contractual with quantifiable remedies. Should there be any further harm pending the hearing and determination of the suit, the same can be quantified and is also payable as damages.
15. Finally, I am of the view that the balance of convenience favours the 1st and 2nd defendants as opposed to the plaintiff, due to the ripple effect of such injunctive orders to other third parties.

Disposition

16. Accordingly, the application dated 27th February 2024 is dismissed with costs to the 1st and 2nd defendants.

DATED, SIGNED AND DELIVERED IN NAIROBI

THIS 18TH DAY OF OCTOBER 2024.

F. MUGAMBI

JUDGE

