



**Cape Holdings Limited (Under Administration) v Synergy Industrial
Credit Limited (Miscellaneous Civil Application 114 of 2015)
[2023] KEHC 18750 (KLR) (Commercial and Tax) (13 April 2023) (Directions)**

Neutral citation: [2023] KEHC 18750 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
MISCELLANEOUS CIVIL APPLICATION 114 OF 2015
DO CHEPKWONY, J
APRIL 13, 2023**

BETWEEN

CAPE HOLDINGS LIMITED (UNDER ADMINISTRATION) APPLICANT

AND

SYNERGY INDUSTRIAL CREDIT LIMITED RESPONDENT

DIRECTIONS

1. This matter came up yesterday for counsel for the parties to confirm compliance of directions issued on February 27, 2023 and highlight their respective submissions.
2. However, Senior Counsel, Mr. Ahmednasir, in lieu of directions issued on 27th February, 2023, sought to have his application dated 21st January, 2023 be given priority to the other pending applications dated December 19, 2022, February 2, 2023 and January 20, 2023. He explained that the reason he had not filed their submissions as directed on 27th February, 2023 is because there is uncertainty on how to proceed with all the pending applications in the matter.
3. On the other hand, Mr. Gitonga, counsel for the Intended Interested Party was incessant that the court had issued substantive directions as to the filing and highlighting of submissions with respect to the pending applications filed by the parties. He confirmed that he had complied with the said directions on behalf of the Intended Interested Party and was of the view that the court should indeed set a ruling date as they were comfortable with the submissions they had filed which he sought be relied on as presented.
4. Mr. Kithingi, Counsel for the Respondent also confirmed that they had also complied with the directions issued on 27th February, 2023 on behalf of the Respondent and proposes that the



Respondent's application dated 20th February, 2023 be given priority since it was a contempt one and had the ability of disposing of the pending applications.

5. Having listened to all counsel for the parties herein, I find that they are all in agreement that on 27th February, 2023, this court issued substantive directions on how to canvass the applications dated 19th December, 2022, 2nd February, 2023 and 20th February, 2023. In pursuance of the said directions, it was intended that counsel for the parties highlight their respective submissions in respect of the three pending applications. However, this did not happen because Senior Counsel, Mr. Ahmednasir proposed that the court first considers an application dated 21st January, 2023 which he had filed seeking to have the Firm of M/S Allen Wamae & Co. Advocates disqualified from acting in this matter since it acts for the Respondent, Cape Holdings Ltd and at the same time acts for I & M Bank which has placed the Respondent, Cape Holdings under administration.
6. I have perused the court record and also checked the Virtual Platform (CTS) but I have not found (sighted) the application dated 21st January, 2023. I also note that there was no indication by the other counsel for the Respondent and Intended Interested Party that they had been served with the said application. It is thus unclear whether or not the said application has been filed and served. In my humble view, I am unable to issue any directions on the said applications. Furthermore, it is worth noting that I & M Bank is not a party in this suit so that if at all the application dated 21st January, 2023 is confirmed, the same can be adjudicated independent of the three pending applications and at any other time.
7. In view of the above findings, I direct that:-
 - a. The Applicant puts their house in order by confirming the status of the application dated 21st January, 2023 and serve the same upon the other parties for a response thereto to be filed and served accordingly.
 - b. In the meantime, since counsel for the Respondent and Intended Interested Party have confirmed having complied with the directions issued on 27th February, 2023 by filing their respective pleadings/submissions, the Applicant be and is hereby directed to file and serve their submissions by close of business on 17th April, 2023 for highlighting on 19th April, 2023.
 - c. The other parties be at liberty to respond to any issues that may arise therein orally during the highlighting.
 - d. There shall be no filing of any other application without leave of court until the ruling is delivered.
 - e. Interim orders issued herein be and are hereby extended.

It is so ordered.

**DIRECTIONS DELIVERED/ISSUED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS
13TH DAY OF APRIL 2023.**

D.O CHEPKWONY

JUDGE

In the presence of:

Mr. Ahmednasir (S.C) and M/S Asli and M/S Rita Joy for Applicant

Mr. Gitonga counsel for Intended Interested Party



