



REPUBLIC OF KENYA

IN THE HIGH OF KENYA

AT GARISSA

CIVIL SUIT NO. E002 OF 2020

YARROW CONSTRUCTION CO. LTD.....APPLICANT

VERSUS

CHIEF OFFICER FINANCE COUNTY COUNCIL OF WAJIR.....1ST RESPONDENT

WAJIR COUNTY GOVERNMENT.....2ND RESPONDENT

RULING

1. The application subject of this ruling is dated the 12th of October 2020 and seeks a host of prayers as follows;

i. Spent.

ii. Spent.

iii. Spent

iv. Pending hearing and determination of the suit or further orders of this court, the court be pleased to order the defendants to pay into a joint interest earning account of the parties advocates the sum of Kenya shillings Twenty-four Million Three Hundred and Fifty-Three (Kshs. 24,024,353/-) in respect of the sum claimed by the applicant.

v. Spent

vi. Spent.

vii. Spent.

viii. Pending hearing and determination of the suit, a restraining Order be issued against the 1st and 2nd defendants from releasing funds to contractors or any other pending bill.

ix. Pending hearing and determination of this suit, this honourable Court be pleased to grant a mandatory order compelling the 1st and 2nd defendants jointly and severally, their agents or any person acting under their behest to release and/or remit funds amounting to Kenya shillings Twenty-Four Million Twenty-Four Thousand Three Hundred and Fifty-Three (24, 02, 353/-) to the plaintiff.

x. The court be pleased to issue such further or other order as it deems just and expedient for the ends of justice to be met.

xi. Costs of the application be provided for.

2. The application is predicated on grounds that the defendants and the plaintiff entered into various contracts and though the plaintiff fulfilled its part of the contract, the defendants have failed to make good payments as envisaged by the said contracts despite inspection of the projects and completion certificates being issued; further due to non-payment of the contract sums the plaintiff has been exposed to untold suffering and unable to sustain its operations including settling of its employees.

3. In response to the application the defendants filed grounds of opposition to the effect that the application is in the nature of judicial review

as it seeks for mandatory orders; secondly the defendants are part of government as envisage in the Government Proceedings Act, Cap 40 of the Laws of Kenya; the application is not hinged on any Law and in any event can be dealt within the substantives suit.

4. I do not want to go to the merit or demerits of the suit at this stage since the defendants are yet to file their defence, suffice it to say that the Plaintiff has made allegations which are yet to be admitted or denied.

5. Secondly no judgement has been entered in favour of the plaintiff yet, and therefore, for now the claim remains as an allegation, despite the documents placed before court and it will be presumptuous and premature to make favourable orders for the plaintiff by putting the sums claimed in a joint account of the parties.

6. Thirdly, it would be punitive to direct that no other contractors be paid based only on the plaint on record, noting that such an order is likely to affect entities not parties to this suit.

7. For the above reasons the application is declined.

8. Costs in the cause.

DATED AT GARISSA THIS 17TH DAY OF DECEMBER 2020.

ALI-ARONI

JUDGE