

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL SUIT NO. 19 OF 2017

BETWEEN

OPTIC TECHNOLOGIES KENYA LIMITED.....PLAINTIFF

AND

COUNTY ASSEMBLY OF VIHIGA.....DEFENDANT

RULING

1. The suit herein seeks recovery of a sum of money that the plaintiff claims is the price of services that it alleges it rendered to the defendant, and which the defendant is said to have refused to pay for. The suit is defended on the basis that there were no contracts for the services allegedly rendered, and if ever there were such contracts then there was no condition that they were to be paid for immediately.

2. The Motion that I am called upon to determine is dated 28th September 2017. It is brought at the instance of the Ethics and Anti-Corruption Commission, seeking to be joined to the pending proceedings as an interested party, and to be allowed to file pleadings in the matter. It is averred that the applicant has been conducting investigations into the contracts the subject of the instant proceedings, and the outcome of the instant proceedings would have a bearing on the said investigations.

3. The application is opposed by the plaintiff. There is an affidavit on record in opposition, sworn by its Managing Director, Desmond Juma Lusweti. He avers that the plaintiff has no claim against the applicant, pointing out that theirs was a simple suit to enforce payment for services rendered. He urges that there is no public interest element in the contracts the subject of the suit. He argues that the applicant can still carry out its investigations without necessarily being joined in the proceedings.

4. The application was urged orally before me on 26th November 2018. Both sides breathed life to the averments made in their respective filings.

5. I note that the defendant is a public entity which runs on public funds. I note too that the applicant is public entity charged with overseeing conduct of public affairs to obviate misuse of public resources. I find the argument by the plaintiff persuasive that the suit is simply for recovery of moneys owed to it by the defendant for services procured and rendered. However, the applicant would have an interest in its oversight capacity regarding the manner public funds are handled. There may be no connection or link between the plaintiff and the applicant, but there is definitely an interest in that matter that has a public element and in respect of which the applicant can be brought into the suit.

6. I am inclined to allow the application dated 28th September 2017 in its entirety. I hereby allow the same. The applicant shall file its pleadings within thirty (30) days. Costs shall be in the cause.

PREPARED, DATED AND SIGNED AT KAKAMEGA THIS 31st DAY OF January, 2019

W. MUSYOKA

JUDGE

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 7th DAY OF February 2019

J. NJAGI

JUDGE