



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

HCCC NO. 553 OF 2011

ROTAM AGROCHEMICAL CO. LIMITED.....PLAINTIFF

VERSUS

TWIGA CHEMICAL INDUSTRIES LIMITED.....DEFENDANT

RULING

1. Following an application for striking out of the Defence and/or entry of Summary Judgement, Hon. Mabeya J. entered Judgment in favour of Rotam Agrochemical Co. Ltd (Rotam or the Plaintiff) against Twiga Chemical Industries (Twiga or the Defendant) for the sum of USD 597,600.41 together with interest thereon at 10% per annum from the date of filing suit until payment in full.

2. Aggrieved by that decision of 25th March 2013, Twiga preferred an Appeal and sought a stay of execution thereof pending the hearing and determination of the Appeal. In a Ruling delivered on 30th July 2014, Hon. F. Gikonyo J granted the application but on condition that Twiga deposits the entire decretal sum in an interest earning account in the joint names of the advocates of the parties and the Deputy Registrar, Nairobi Milimani Court, within 45 days of the order. The deposit was made although the Deputy Registrar may have been left out. But that is besides the matter at hand!

3. Twiga successfully prosecuted the Appeal and in a judgment delivered on 8th February 2019 in Civil Appeal No. 16 of 2016 Twiga Chemical Industries Limited vs. Rotam Agrochemical Co. Ltd., the Court of Appeal set aside the Ruling of Mabeya J. made on 25th March 2013.

4. It is for this reason that Twiga has moved Court through a Notice of Motion dated 15th February 2019 for the following orders:-

a) That the sum of USD, 597,600.41 held in Equity Bank, A/C No. 0180373624724 in the names of Ngatia & Associates Advocates and Shapley Barret & Co. Advocates be released to the Defendant's Advocates i.e Ngatia & Associates Advocates together with all accrued interest.

b) That a date for pre-trial directions be allocated.

c) Costs of this application be provided for.

5. Rotam opposes the application on the following 4 grounds:-

(a) Although the Order striking out the Defence and entering Judgment was set aside by the Court of Appeal, the suit is not yet finalized since it was directed that the same proceeds to full trial.

(b) In the circumstances, the logical step is to expedite the trial of the suit with a view to obtaining a full and final determination before the issue of release of the funds is addressed.

(c) The funds are held in an interest earning Bank Account in the joint names of the respective law firms and therefore safe and secure.

(d) No prejudice has been alleged or demonstrated against the continued holding of the funds in the joint Account.

6. Clearly, the application is merited and the opposition to it is weak. The joint deposit was ordered as a condition for stay pending the hearing of Twiga's appeal. The order for deposit was made so that the deposited amount would be available in the ultimate event that the

Appeal failed. But as it turned out the Appeal succeeded, the judgment entered by the High Court was set aside and there is no subsisting judgment against Twiga. The event upon which the deposit (security) was ordered has been resolved in favour of Twiga and there can be no reason to decline the request for release of the money back to the owner.

7. In respect to prayer (b) in which Twiga seeks a date for pre-trial directions, that is not opposed. Indeed it is a reasonable request because this is an old matter that needs to be heard and determined without further delay.

8. Ultimately,

a) Prayer (a) of The Notice of Motion dated 15th February 2019 is allowed, the release shall be forthwith. Costs of the application shall be in the cause.

b) This Court shall, immediately after delivery of this ruling, give a date for Case Management Conference.

Dated, Signed and Delivered in Court at Nairobi this 5th day of April, 2019.

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F. TUIYOTT

JUDGE

PRESENT:

Nyaga for Ngatia for Applicant

N/A for Respondent

Nixon - Court Assistant