



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI COMMERCIAL & TAX DIVISION**

**CIVIL SUIT NO. 84 OF 2017**

**EAST AFRICA CAPITAL PARTNERS MANAGEMENT LP.....PLAINTIFF**

**VERSUS**

**WANANCHI NOMINEES LIMITED.....1<sup>ST</sup> DEFENDANT**

**ISP KENYA LIMITED.....2<sup>ND</sup> DEFENDANT**

**EAST COAST TELECOMS LIMITED.....3<sup>RD</sup> DEFENDANT**

*(By original action)*

*And Between*

**WANANCHI NOMINEES LIMITED.....1<sup>ST</sup> PLAINTIFF**

**INTERNATIONAL CONSULTING MARKETING**

**SERVICES LIMITED (formerly ISP KENYA LIMITED).....2<sup>ND</sup> PLAINTIFF**

**EAST COAST TELECOMS LIMITED.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**EAST AFRICA CAPITAL PARTNERS MANAGEMENT LP.....1<sup>ST</sup> DEFENDANT**

**AFRICA TELECOMMUNICATIONS**

**MEDIA AND TECHNOLOGY FUND I, LLC.....2<sup>ND</sup> DEFENDANT**

**WANANCHI GROUP HOLDINGS LIMITED.....3<sup>RD</sup> DEFENDANT**

**RICHARD BELL.....4<sup>TH</sup> DEFENDANT**

*(By Counterclaim)*

*And further Between*

**WANANCHI GROUP HOLDINGS LIMITED.....PLAINTIFF**

**VERSUS**

**WANANCHI NOMINEES LIMITED.....1<sup>ST</sup> DEFENDANT**

INTERNATIONAL CONSULTING MARKETING

SERVICES LIMITED (formerly ISP KENYA LIMITED).....2<sup>ND</sup> DEFENDANT

EAST COAST TELECOMS LIMITED.....3<sup>RD</sup> DEFENDANT

(By Further Counterclaim)

**RULING**

1. Before me is a Notice of Motion application dated 1<sup>st</sup> October 2018. The same is filed by **Wananchi Group Holdings Limited** (the 3<sup>rd</sup> Defendant in the counterclaim). The prayer sought is for an order to strike to the 3<sup>rd</sup> Defendant in the counterclaim from this action.
2. The Defendants in the original suit, namely **Wananchi Nominee Limited, ISP Kenya Limited and East Coast Telecoms Limited** counterclaimed and in so doing sued the 3<sup>rd</sup> Defendant in the counterclaim. The only prayer in that counterclaim is for an injunction to restrain the 3<sup>rd</sup> Defendant in the counterclaim, amongst others, from negotiating the sale of, offering for sale, and/or selling **Wananchi Business Services (WBS)**.
3. The 3<sup>rd</sup> Defendant in the counterclaim through the affidavit of Randhirsingh Judooo, its Director, deponed that the 3<sup>rd</sup> Defendant in the counterclaim reached a business decision not to sell WBS because it is no longer economically viable. There is attached to the said affidavit an extract of the minute of the Board of Directors of the 3<sup>rd</sup> Defendant in the counterclaim whereby it was resolved not to proceed with sale of WBS.
4. It is on that basis the application seeks the striking out of the 3<sup>rd</sup> Defendant in the counterclaim, that is because the basis of the counterclaim ceased to exist. Further the deponent stated that the 3<sup>rd</sup> Defendant in the counterclaim should be struck out because it was joined in these proceedings because of its relationship with the 1<sup>st</sup> to the 4<sup>th</sup> Defendant, who were struck out of these proceedings by this Court’s ruling of 21<sup>st</sup> September 2018.
5. Although the application was served on all parties there was no opposition filed.
6. Accordingly since the foundation of the cause which brought the 3<sup>rd</sup> Defendant in the counterclaim ceased to exist there is no reason to continue having that party in this action. There will be no costs awarded to the application because the applicant concedes that at one time it intended to sell WBS, the very basis of the counterclaim.
7. The order of the Court is as follows:

- a. **The 3<sup>rd</sup> Defendant in the counterclaim, Wananchi Group Holdings Limited, is hereby struck out from the counterclaim.**
- b. **There shall be no order as to costs of the Notice of Motion dated 1<sup>st</sup> October 2018.**

DATED, SIGNED and DELIVERED at NAIROBI this 4<sup>TH</sup> day of OCTOBER, 2019.

MARY KASANGO

**JUDGE**

**Ruling Read and Delivered in Open Court in the presence of:**

Sophie.....COURT ASSISTANT

.....FOR THE PLAINTIFF

.....FOR THE 1<sup>ST</sup> DEFENDANT

.....FOR THE 2<sup>ND</sup> DEFENDANT

.....FOR THE 3<sup>RD</sup> DEFENDANT