



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

MISC APPLICATION NO. 312 OF 2019

RIO HOLDINGS LIMITED.....APPLICANT

- VERSUS -

PEREZ WELLINGTON JOSEPH ODERO.....1ST RESPONDENT

THERESA MARY AWUOR ODERO.....2ND RESPONDENT

SAMUEL ODERO.....INTERESTED PARTY

RULING

1. **Rio Holdings Limited** (the applicant) has brought this action which is based on the provisions of Section 7 of the Arbitration Act. The matter is initiated as a miscellaneous application for the orders as follows:

a. **THAT** pending the hearing and determination the Arbitral proceedings, the Respondents by themselves and through anyone acting on their behalf, approval or acquiescence including their agents, assigns, workers, the 1st interested party be restrained from interfering in any way with the access and use for commercial purposes the borehole facility situated on L.R No. 12832/2, Langata Area, Nairobi by the Applicants and its employees.

b. **THAT** pending the hearing and determination the Arbitration proceedings, the Respondents by themselves and through anyone acting on their behalf, approval or acquiescence including their agents, assigns, workers and the 1st interested party be restrained from collecting water from the borehole situate on **L.R. No. 12832/2, Lang'ata Area, Nairobi** and selling it at no consideration to the Applicant.

c. **THAT** in accordance with the terms of the parties Agreement and pending the determination of the Arbitral reference, the Respondents provide security for the quiet use of the borehole facility and allow the Applicant and its agents to enjoy its use.

d. **THAT** pending the determination of the Arbitral reference, the Respondents be restrained by themselves or their or acquiescence, by their agents, employees, assigns, through the 1st interested party or any other person from intimidating, harassing and abusing the Applicant, its employees and agents.

2. The application, though served, was unopposed. The application is premised on the affidavit of Angela J. A. Odero.

3. In that affidavit the deponent state that she is a director of the applicant. That the applicant's core business is trading in bulk water, water purification and related services. The applicant and **Perez Wellington Joseph Odero** and **Theresa Mary Awuor Odero** (the respondents) entered into an agreement where the applicant agreed to drill a water borehole on the respondent's property **L.R. No. 12832/2 Langata Area Nairobi**. The agreement provided that the applicant would drill the water borehole for commercial purposes and in turn the applicant would have full control of that borehole. That the respondents breached the said agreement by refusing to allow the applicant access, at will, to that borehole. Further that the respondent has permitted the interested party to operate the water selling business from that borehole. In the process that the interested party has with the acquiescence of the respondents harassed and intimidated the applicant's employees. That the interested party, again with the respondent's acquiescence has permitted the interested party to cut the padlock to the borehole.

4. The applicant has by letter dated **15th August 2019** declared a dispute and initiated the arbitration process.

ANALYSIS

5. The parties agreement under clause 14 provides:

“Any breach of any of the provisions in this agreement by either party will be addressed through arbitration by arbitrator to be agreed by both parties.”

Section 7(1) and (2) of the Arbitration Act provides:

“Interim measures by court

(1)It is not incompatible with an arbitration agreement for a party to request from the High Court, before or during arbitral proceedings, an interim measure of protection and for the High Court to grant that measure.

(2)Where a party applies to the High Court for an injunction or other interim order and the arbitral tribunal has already ruled on any matter relevant to the application, the High Court shall treat the ruling or any finding of fact made in the course of the ruling as conclusive for the purposes of the application.”

6. There is no opposition to the application. It means that the depositions are uncontroverted. In my view the applicant is entitled to interim measure of protection.

CONCLUSION

7. I grant the following orders:

a. **THAT** pending the appointment of an arbitrator the Respondents by themselves and through anyone acting on their behalf, approval or acquiescence including their agents, assigns, workers, the 1st interested party be restrained from interfering in any way with the access and use for commercial purposes the borehole facility situated on **L.R. No. 12832/2, Lang’ata Area, Nairobi** by the Applicants and its employees.

b. **THAT** pending the appointment of an arbitrator the Respondents by themselves and through anyone acting on their behalf, approval or acquiescence including their agents, assigns, workers and the 1st interested party be and are restrained from collecting water from the borehole situate on **L.R. No. 12832/2, Langata Area, Nairobi** and selling it at no consideration to the Applicant.

c. **THAT** in accordance with the terms of the parties Agreement and pending the appointment of the arbitrator the Respondents provide security for the quiet use of the borehole facility and allow the Applicant and its agents to enjoy its use.

d. **THAT** pending the appointment of the arbitrator, the Respondents be and are hereby restrained by themselves or their or acquiescence, by their agents, employees, assigns, through the 1st interested party or any other person from intimidating, harassing and abusing the Applicant, its employees and agents.

e. **THAT** costs of the Application dated 3rd **September 2019** are awarded to the applicant.

DATED, SIGNED and DELIVERED at NAIROBI this 4th day of October, 2019.

M. KASANGO

JUDGE

Ruling read in open court in the presence of

Sophie Court clerk.

..... FOR THE APPLICANT

.....FOR THE 1ST RESPONDENT

.....FOR THE 2ND RESPONDENT

.....FOR THE 3RD RESPONDENT