REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL CASE NO. E261 OF 2019

CROP HEALTH TECHNOLOGIES LIMITED.....PLAINTIFF

-VERSUS-

AGRITECNO EAST AFRICA LIMITED.....1ST DEFENDANT

AGRITECNO FERTILIZANTES SL.....2ND DEFENDANT

R U L I N G

1. CROP HEALTH TECHNOLOGIES LIMITED, the Plaintiff, pleaded into his case that it entered into a written exclusive corporation and distribution agreement with **AGRITECNO EAST AFRICA LIMITED**, the 1st Defendant. By that agreement the 1st Defendant was to provide the Plaintiff with various organic fertilizer products. The Plaintiff in this case pleaded that the 1st Defendant has breached that agreement and has failed, refused or neglected to assist the Plaintiff to promote, market, distribute and sell the said products. That as a consequence of that breach the Plaintiff has incurred direct expenses and losses.

2. The Plaintiff further pleaded that the 1st Defendant terminated the agreement without notice to it. The Plaintiff prays for judgment for Kshs. 300,142,261.14 and for general damages for breach of contract. It is also the Plaintiff's prayer that injunction be issued restraining the 1st Defendant from appointing another corporation or any other entity within Kenya to distribute the aforestated products.

3. The Plaintiff filed an interlocutory application by Notice of Motion dated 22nd August 2019. By that application the Plaintiff seeks injunction orders to restrain the 1st Defendant from appointing another distributor of the products; to restrain the 1st Defendant from transferring or dealing with its assets repossessed on 28th August 2019; to restrain the 1st Defendant from demanding payment from the Plaintiff; and an order directed at both the Defendants ordering them to release to the Plaintiff the repossessed assets.

4. At this very initial stage I wish to state that prayers for release of repossessed goods and for restraint against interference by the Defendants of the repossessed assets are not anchored on the main claim, that is the Plaint. On that ground alone those prayers are unmerited.

5. It is important to note that the Defendants also filed a Notice of Motion application dated 30th August 2019. The Court heard both the Plaintiff's and the Defendants' application together. This ruling therefore relates to both those applications.

6. By their application the Defendants seek stay of these proceedings pending Arbitration. That prayer is premised on the Arbitral Clause in the agreement, which is in the following terms:

> **"Any dispute arising from or in connection with this Agreement shall be submitted to the ICC (International Chamber of Commerce) International Court of Arbitration, commonly known simply as the "the Court". The arbitral decision is final and binding upon both parties. The seat of Arbitration shall be Paris. The number or Arbitrators shall be one or three. The Arbitration proceedings shall be conducted in English."**

ANALYSIS

7. The Plaintiff's case is based on the parties' agreement which is entitled "Corporation & Distribution Framework Agreement." Under that agreement parties agreed to have their dispute arising in connection with that agreement to be subjection to Arbitration process. The seat to

that Arbitration, is provided in that agreement, to be Paris. See the reproduced Arbitration clause above. It means that any party seeking to enforce, as the Plaintiff wishes to do here, that agreement should firstly file such an application in Paris and it is the law of Paris that would guide the Court or the Arbitration over the subject of that agreement. See the case **C V D (2007) EWHC 154** where the Court held that:

> **"The seat of Arbitration brings in the law of that country as the curial law and it is analogous to an exclusive jurisdiction clause. Not only is there an agreement to curial law of the seat, but also to the Courts of the seat having supervisory jurisdiction over the Arbitration, so that by agreeing to the seat, the parties agree that any challenge to an interim or final award is to be made by the Courts of the place designated as the seat of Arbitration"**

8. It follows that this Court has no jurisdiction to entertain the Plaintiff's case and the interlocutory application before Court. This Court would have no jurisdiction to entertain the case because, as stated in **C V D (Supra),** any challenge to the final or interim award can only be heard by a Court in Paris.

9. It is because of the above finding that the Plaintiff's Notice of Motion application dated 22nd August 2019 fails. And because it is the Court's view that it lacks jurisdiction to entertain this case that the Defendant's application cannot be granted.

CONCLUSION

10. The orders of this Court, therefore, are:

> **i. The Notice of Motion application dated 22nd August 2019 is dismissed with costs to the Defendant.**
>
> **ii. The Notice of Motion dated 30th August 20119 is struck out with no orders as to costs.**
>
> **iii. At the reading of this Ruling the Court will give a mention date to afford the Plaintiff opportunity to decide what it wishes to do with this case in view of the finding hereof that the Court lacks jurisdiction to entertain the suit.**

DATED, SIGNED and **DELIVERED** at **NAIROBI** this **5TH** day of **NOVEMBER, 2019.**

MARY KASANGO

JUDGE

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

Sophie..... **COURT ASSISTANT**

..... **FOR THE PLAINTIFF**

..... **FOR THE 1ST DEFENDANT**

..... **FOR THE 2ND DEFENDANT**