



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL SUIT NO. 211 OF 2019

HATARI SECURITY GUARDS LIMITED.....PLAINTIFF/APPLICANT

-VERSUS-

KENYA PIPELINE COMPANY LIMITED.....DEFENDANT/RESPONDENT

RULING

1. Hatari Security Guards Limited, the plaintiff/applicant took out the Notice of Motion dated 2nd October, 2019 in which it sought for the orders hereunder:

i. Spent.

ii. Spent.

iii. Spent.

iv. THAT the defendant/respondent be restrained from replacing the plaintiff's/applicant's 115 security guards with any other security company and be compelled to cancel its two letters dated 9th September, 2019 and 27th September, 2019 pending the hearing and determination of the suit.

v. THAT the costs of the application be provided for.

2. The Motion stands supported by the grounds laid out on its face and the facts deponed in the affidavit of *Josphat K. Mwangi*.

3. The defendant/respondent put in the replying affidavit of *Jane Joram* to oppose the Motion.

4. During the interparties hearing of the Motion, the parties' individual advocates presented oral arguments.

5. I have considered the grounds set out on the face of the Motion, the facts deponed in the affidavit in support of and in opposition thereto, and the contending oral submissions.

6. As relates to the authorities filed by the parties, I find the same to be inapplicable for the reason that they by and large constitute judgments delivered upon hearing of the respective suits.

7. It is clear that the application concerns itself with the granting of an interlocutory injunction. The germane principles on interlocutory injunctions were stated by the Court of Appeal in East Africa in the case of **Giella v Cassman Brown & Co. Ltd (1973) EA** as follows:

a. The applicant must first establish a prima facie case with a probability of success.

b. The applicant must then demonstrate that he, she or it stands to suffer irreparable loss that cannot be adequately compensated through damages.

c. Where there is doubt on the above, then the balance of convenience should tilt in favour of the applicant.

8. On the first principle, Josphat K. Mwangi, one of the applicant's directors, averred in his affidavit that for a number of years, the applicant

had provided security services to the respondent without any incident and that sometime in 2018, the parties entered into and executed a contract of a similar nature for a period of two (2) years, and whose terms of termination were clearly laid out therein.

9. The deponent further stated that contrary to the procedure stipulated in the agreement, the respondent illegally and irregularly terminated the agreement without issuing a valid notice to the applicant.

10. The above sentiments were echoed by *Mr. Sausi, learned* counsel for the applicant and added that his client was not paid for the services rendered to the respondent.

11. In contrast, the respondent maintained that despite the agreement that the applicant's guards would provide utmost security to the respondent's premises, the said guards failed to report an incident of trespass by third parties which led to illegal siphoning of fuel from the respondent's premises.

12. Mr. Muyuri, learned advocate for the respondent further contended that the contract was terminated by his client on the basis of negligence on the part of the applicant's employees, which reasons were clearly set out in the termination letter and that a notice of such termination was issued.

13. It is not disputed that the contract between the parties was terminated by the Respondent; however, one of the main issues arising has to do with whether such termination was valid and in line with the agreement.

14. There also arises the issue as to whether the respondent paid the applicant for services rendered in full. It is apparent that aforesaid issues can only be adequately ventilated at the trial of the suit. I am satisfied that the applicant has established a prima facie case with reasonable chances of success.

15. As relates to the second principle on irreparable loss, it is the applicant's averment through Josphat K. Mwangi that as a result of the unlawful termination of the agreement, a great number of the applicant's employees have been rendered jobless and that unless the respondent is restrained from further termination, more employees are likely to be rendered jobless.

16. In reply, Mr. Muyuri on behalf of the Defendant contended that the applicant has not demonstrated the substantial loss it stands to suffer if the order for injunction is granted..

17. Having considered the rival submissions and or arguments, it is my view that since the applicant offered security services to the respondent through its employees whose rights are indirectly represented in the suit, and therefore any further terminations would inevitably lead to the loss of jobs and loss of livelihoods for an increased number of such employees. I am therefore convinced that this constitutes irreparable loss that cannot be adequately compensated through damages.

18. In view of the foregoing, I find that the balance of convenience automatically tilts in favour of the applicant.

19. Consequently, I will allow the Motion in terms of prayer (iv). Costs of the application shall abide the outcome of the suit.

Dated, signed and delivered at Nairobi this 13th day of December, 2019.

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J.K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff/Applicant

..... for the Defendant/Respondent