



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT NO. 58 OF 2018

OILFIELD MOVERS LIMITED 1ST PLAINTIFF/APPLICANT

MAYPHIL INVESTMENT LIMITED 2ND PLAINTIFF/APPLICANT

C & G VENTURES LIMITED 3RD PLAINTIFF/APPLICANT

VERSUS

KENYA ENERGY SERVICES LTD 1ST DEFENDANT/RESPONDENT

EAST AFRICAN OILFIELD

SERVICES LIMITED 2ND DEFENDANT/RESPONDENT

RULING

1. The prayers in the Notice of Motion of 9th February 2018 have all but been overtaken by events or compromised. The motion seeks;-

5. THAT pending the hearing and determination of this suit a temporary injunction be issued against the 1st and 2nd Defendants/Respondents whether by itself, agent, employee or representative from disposing of any movable assets belonging to the 1st Defendant.

6. THAT pending the hearing and determination of this suit a freezing order be issued in respect to A/C No.1002401815 and 1002401823 held by the 1st Defendant at NIC Bank Kenya PLC, Prestige Branch.

7. THAT pending the hearing and determination of the suit an Interim Injunction be issued against the 2nd Defendant whether by itself, agent, employee or representative from interfering with the Board of Directors of the 1st Defendant/Respondent.

8. THAT leave be granted to serve summons or notice of summons to the 2nd Defendant in Seychelles.

9. THAT cost of the Application be provided for.

2. At the hearing of the Motion, the Applicants concede that the Freezing Order of the 1st Defendant's account may serve no purpose as there are no substantial funds therein. As the Applicants acknowledge the futility of such an order, there is no need to grant it and it is therefore declined.

3. As to disposal of movable assets of the 1st Defendant, it has turned out that the substantial movable assets of the 1st Defendant comprise of 12 Tower lights and two Power Generators. The 1st Defendant contends that it has not taken any steps to dissipate any of its Assets or to move them outside the jurisdiction of the Court. I did not hear the 1st Defendant to have any particular or serious objection to the grant of Prayer 5 and I therefore grant it.

4. Prayer 8 which is for service of Summons outside jurisdiction is no longer necessary as both Defendants have appointed Counsel to act for them in this matter.

5. Prayer 7 seeks that the 2nd Defendant whether by itself, agents, employee or representatives be restrained from interfering with the Board of Directors of the 1st Defendant. Yet it is common cause that the 2nd Defendant is the majority Shareholder of the 1st Defendant (*see for example paragraph 22 of the Plaintiff*). Another feature of this dispute is that the Plaintiffs are not, and have never been, Shareholders or Directors of the 1st Defendant Company. The Plaintiff alleged that they paid for the purchase of Shares in the 2nd Defendant but the funds from the purchase were used to invest in the operations of 1st Defendant. In the substantive Claim, the Plaintiffs do not ask for control of the affairs of the 1st Defendant and that may not be a feasible Claim as they do not have a direct interest in the 1st Defendant. If it is the 2nd Defendant and not the Plaintiffs who are the majority Shareholders of the 1st Defendant then to grant the Order sought would be to unreasonably stifle the affairs and management of the 1st Defendants. The Court is disinclined to grant the order.

6. Ultimately, the Court makes the following orders in respect to the Notice of Motion dated 9th February, 2018:-

(i) Prayer 6 and 7 are declined.

(ii) Prayer 5 is granted.

(iii) Costs shall be in the cause

Dated, delivered and signed in open Court at Nairobi this 5th day of June 2018.

F. TUIYOTT

JUDGE

In the presence of:

Wachira for the Plaintiff

Kahara for the Respondents

Nixon-Court Assistant