



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL SUIT NO. 144 OF 2017

NATIONAL OIL CORPORATION OF KENYA LIMITED.....PLAINTIFF

- VERSUS -

REAL ENERGY LIMITED.....DEFENDANT

RULING

1. *National Oil Corporation of Kenya Limited* is the plaintiff hereof. The defendant is *Real Energy Limited*.
2. It is not denied that the plaintiff is the registered proprietor of Property *LR. No. 209/6776 Ngong Road (the property)*.
3. It is also not in dispute that by a dealership licence agreement dated *1st April, 2014*, the plaintiff entered into a dealer licence with the defendant whereby the defendant was to operate the plaintiff's service station on the property.
4. The plaintiff by a letter dated *15th October, 2015*, terminated the dealership agreement with the defendant. This termination prompted the defendant to approach The *Business Premises Rent Tribunal (BPRT)* under *BPRT No. 720 of 2015*.
5. Before the *BPRT*, the plaintiff raised a preliminary objection that the tribunal had no jurisdiction to entertain the matter. That preliminary objection was overruled by the tribunal's judgment dated *29th April, 2016*. By that judgment, the tribunal held that it had jurisdiction to hear the matter under *Landlord and Tenant (shop, hotel and catering establishment) Act, Cap 301*.
6. The plaintiff being aggrieved, with that judgment of *BPRT*, appealed before the *Environment and Land Court* being *ELC Appeal No. 54 of 2016*.
7. The parties in this matter argued two applications which are the subject of this ruling. The first application, in time, is dated *3rd April, 2017*. It is by the plaintiff. By that application the plaintiff seeks an injunction pending determination of this suit, restraining the defendant from operation of the fuel station the subject of the dealer licence aforesaid. The second application is by the defendant and is dated *29th March, 2018*. By that application the defendant seeks to stay this suit pending the hearing and determination of the appeal before ELC being appeal no. *54 of 2016*.
8. Although both those two applications were argued before me, extensively, having perused the applications and the affidavit evidence of both applications it has become crystal clear that the plaintiff's application cannot be determined at this stage while the appeal on jurisdiction or otherwise of *BPRT*, is pending before the ELC. This is because, to make a determination on the plaintiff's application will be to pre-judge the appeal before ELC. It will essentially mean that this court has determined it has jurisdiction over this matter before ELC decides on the appeal.
9. The appeal before ELC will either decide that *BPRT* has jurisdiction, in which case there will be no basis to grant the injunctive orders as sought by the plaintiff in this matter, because ELC will have determined that the defendant is a protected tenant under Cap 301: however, if ELC determines that *BPRT* has no jurisdiction, the plaintiff can renew its application for injunction. The plaintiff, although it will be denied access to the property, pending the determination of the appeal it is protected from adverse effect of the defendant using its brand at the petrol station. This is because on *20th April, 2017*, this court granted an order restraining the defendant from using or associating itself with the plaintiff's brand.
10. The only application therefore, that this ruling will determine is the defendant's notice of motion. The defendant sought a stay of this suit pending the determination of the appeal before ELC. That application is mainly based on the ground that the issue in the pending appeal before ELC is substantially in issue before this court.

11. **Section 4 of Cap 301** provides as follows:

“(1) Notwithstanding the provisions of any other written law or anything contained in the terms and conditions of a controlled tenancy, no such tenancy shall terminate or be terminated, and no term or condition in, or right or service enjoyed by the tenant of, any such tenancy shall be altered, otherwise than in accordance with the following provisions of this Act”.

12. Section 4, if applicable, will prevent the taking over by the plaintiff of the petrol station, which is what the plaintiff seeks by this suit. **BPR** by its decision which is appealed against, made a determination as provided under **Section 12 (1) (a) of Cap 301**, that the defendant’s ‘**tenancy**’ was protected under Cap 301.

13. **Section 6 of Civil Procedure Act cap 21** is the section from which this court derives the power to stay a suit. That section is in the following terms:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

14. Whether a court of law should or should not grant stay of proceedings is a matter of judicial discretion. There is a general public interest in avoiding a multiplicity of claims: see the book **A Practical Approach to Civil Procedure** by **Stuart Sines**. In this case, the public interest will be served by avoiding having two contradictory decisions by two different courts over the same issue.

15. It is because of the above that this court will accede to the defendant’s application. Having reached a decision that this suit be stayed, it will be as has been stated above undesirable to entertain the plaintiff’s application.

16. The orders of the court are:

*a. The **notice of motion** dated **29th March, 2018** is granted and accordingly this suit is hereby stayed pending the hearing and determination of the appeal being **ELC Appeal No. 54 of 2016**.*

*b. The costs of the **notice of motion** dated **29th March, 2018**, shall be in the cause.*

DATED, SIGNED and DELIVERED at NAIROBI this 19th day of July 2018.

MARY KASANGO

JUDGE

Ruling read in open court in the presence of

Court Assistant.....Sophie

..... for the Plaintiff

..... for the Defendant