



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 71 OF 2018

MASAI INVESTMENT LIMITEDPLAINTIFF

VERSUS

KENYA PORTS AUTHORITY.....DEFENDANT

R U L I N G

1. I do wholly appreciate that this matter ought to be given direction by trial court which is out of station on official duties. However the need to do justice to the litigants must be appreciated and upheld all the time.

2. Having read the orders sought to be discharged by the defendant and sought to be enforced by contempt application by the plaintiff, together with the proceedings giving rise to the said orders and while taking cognizance of the submissions offered before me this morning, I call in the overriding objective of the court to administer justice in an even and proportionate manner by avoiding hardship to litigants.

3. During the submissions, Mr. Khagram proposed that instead of payment of the sum being made to the plaintiff, directly which shall have the effect of concluding the dispute before hearing, the money be kept into an escrow account in the joint names of the advocates for the parties with a rider that the plaintiff do provide an undertaking as to damages that may result from the orders subject of the two applications.

4. Mr. Shimaka readily accepted to provide the undertaking but strenuously opposed the tinker with the court orders after the time given to the defendant lapsed without compliance. He contended that it would encourage disobedience of court orders.

5. I have considered all I consider to best serve the interests of the disputants and I am prepared to tinker with the orders by Chepkwony J, given on the 20/9/2018 without compromising the two pending application. I seek to do so by settling on a middle ground that will ensure that none of the parties is prejudice pending the determination of the two application.

6. In that exercise, the order that commends itself to court is as follows:-

i. The sum sued upon, being Kshs.80,700,000.00, be deposited into an escrow account in the joint names of the advocates for the parties within 14 days from today.

ii. The plaintiff shall, within 7 days, file in court an undertaking for the payment any damages that may ensue as a result of the interim orders issued here on 20/9/2018.

iii. In default by the plaintiff to provide the said undertaking the defendant will have no obligation to avail the deposit and the orders issued on 20/9/2018 shall stand stayed pending the determination of the two application together with the Preliminary Objection filed.

iv. However if the defendant shall be the party in default to comply with these orders then the orders as far as deposit shall stand discharged.

v. Parties shall attend before the trial court on the 30/10/2018 for hearing of the two applications and the preliminary objection.

vi. Meanwhile, parties are encouraged to negotiate and consider going to the merits of the suit including a settlement of the undisputed facts.

vii. Costs in the cause.

Dated and delivered at Mombasa this 11th day of October 2018.

P.J.O. OTIENO

JUDGE