



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI

CIVIL CASE NO.10 OF 2018

MAGNATE VENTURES LIMITED.....PLAINTIFF/APPLICANT

VERSUS

KENYA RAILWAYS GOLF CLUB.....DEFENDANT/RESPONDENT

RULING

The Defendant filed application dated 12th July 2018 seeking to enjoin M/S BACKLIGHT LIMITED as Interested Party in this suit.

Grounds on the face of the application are that issues to be resolved between the Plaintiff and Defendant in this suit will affect the interested party directly and that the said issues should be determined between the 3 parties herein.

That the contract currently in force on the suit property involves the Interested Party and that it would be in the interest of justice that the proposed interested party be enjoined to facilitate the final and effectual determination of issues arising in this suit.

The application is supported by the affidavit of LABAN KAROBIA GATHUNGU, the Chairman of the Management Committee of the Defendant herein.

He restated grounds on the face of the application. He confirmed that the Defendant awarded tender and entered into a contract with proposed interested party to occupy and erect 6 Bill Boards and fit in signages on LR NO.209/11379 for a period of 5 years commencing 1st January 2018 at a contractual sum of Kenya shillings fifteen million(Kshs. 15,000,000).

He added that at the time of entering into contract with the interested party, there was no existing contract between the Defendant and any other party.

In support of averments by the Plaintiff, the interested party filed Replying Affidavit sworn by Bernard Wangai on 20th July 2018.

He averred that the Interested Party emerged the highest evaluated bidder and that they executed a contract on 31st December 2017 to occupy and erect 6 billboards and fit signages on the Defendants property namely LR. NO.209/11379.He attached the contract to the Affidavit.

That there was a term in the contract requiring the Defendant to hand over to the Interested Party, six Billboard sites which were then occupied by the Plaintiff.

That the intention of filing this suit was to interfere and/or hinder the commencement of the contract with the proposed Interested Party.

That the Defendant risks being held in breach of the said contract.

He restated grounds on the face of the application.

He further averred that in performance of the said contract the Interested Party paid first quarter of Kshs. 3,750,000 to enable commencement of the lease agreement.

He averred that there is need to enjoin the Interested Party as there is a valid existing contract to be on the suit land and any adverse order shall affect them.

That the interested party is a necessary party as issues arising from this suit will have direct impact on the contract dated 31st December 2017.

That since this suit was filed on 12th January 2018 and their contract executed on 31st December 2017, their rights supersede the rights of the Plaintiff.

In response, the Plaintiff filed grounds of opposition dated 23rd July 2018.

The Plaintiff submitted that this matter is before Arbitral Tribunal and preservation orders have been granted by this Court. The Plaintiff contends that there are no live proceedings in this matter upon which the intended interested party can be enjoined.

The Plaintiff contend that the applicant to enjoin Backlite Limited as an

I have considered averments and submissions by parties. I have also perused documents attached to the Affidavits.

Documents confirm that the intended interested party participated in the advertised tender. Defendant alleges that following the tender process, it executed a contract with the intended interested party. On the other hand, the Plaintiff's position is that it was entitled to renewal of contract and Plaintiff acted improperly by commencing tender process.

The intended interested party has indicated that the first quarter payment of Kshs. 3,750,000 was made to the Defendant on 4th January 2018 but they have not received vacant possession of the property.

From facts set out in the averments, there is no doubt, that orders or decision to be arrived by Court or Arbitral Tribunal will affect the intended Interested Party. It is therefore a necessary party in this suit.

From the foregoing, I find that the application herein is merited.

FINAL ORDER

1. Application dated 12th July 2018 is hereby allowed.
2. M/S BACKLIGHT LIMITED is hereby enjoined as an Interested Party in this suit.
3. Costs in the cause.

Ruling Delivered, Dated and Signed at Nairobi this 6th day of December, 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

SAKINA: COURT ASSISTANT

M/S KERUBO H/B HAVI: COUNSEL FOR PLAINTIFF/RESPONDENT

GATURU: COUNSEL FOR DEFENDANTS/APPLICANT

NO APPEARANCE: COUNSEL FOR PROPOSED INTERESTED PARTY