



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI

HCC APPEAL NO.273 OF 2018

TRICON ENERGY UK LIMITED.....PLAINTIFF/APPL

VERSUS

GENERAL PLASTICS..... DEFENDANT/RESP

RULING

This is a ruling on the Plaintiff's application dated 9th July 2018. It seeks to restrain the Respondents from transferring its assets and shares pending hearing and determination of this suit.

Grounds on the face of the application are that the Respondent is in the process of transferring its shares to Africa Agriculture and that the Respondent's shares will be diluted as other bidders are making a stake at Defendants Company's ownership after audit by Ernest and Young; that the Plaintiffs suit will be rendered nugatory if the Defendant company becomes insolvent and loses its business.

In response, the Defendant filed Replying Affidavit dated 19th July 2018 sworn by Rashik Shah the Deputy Chairman of Defendants Board of Directors. He averred that the publication annexed v as BE-1&BE-2 relate to transaction, which occurred in the year 2015; that the transaction is historical and unable to cause apprehension to the Applicant.

The Respondent averred that at currently it does not plan to sell its shares

The Respondent avers that this Court should not issue orders in vain.

The Respondent state that in the alternative the order sought is board and will result in crippling the Defendants business; that the Defendant operates a factory with parts, which need to replaced due to wear and tear and if Defendant is restrained from disposing assets, it will not be able to operate efficiently.

The Respondents contention is that the Applicant has not met the threshold for grant of injunction.

I have considered rival averments herein.

I wish to consider whether the Applicant has made the prerequisites set out in the case of **Giella Vs Cassman Brown**.

From the annexures to the application, it is evident that there is intention by the Defendant to sell its shares to investors. Applicant has attached documents showing indebted ness from the Defendant.

From pleadings herein it evident that there is likelihood of failure by the Applicant to recover its claim against the Defendant if shares and assets are sold.

I find that that the the Applicant has established ingredients for grant of injunction. I also note that by letter dated July 2018, the Defendant admitted owing the Applicant US\$431,072.13.

I t would therefore be in the interest of justice to protect from losing its entitlement in the event that this suit is successful.

FINAL ORDER

1. Application dated 9th July 2018 is allowed. The Respondent is restrained from disposing its assets and shares pending herein

determination of this suit.

2. In the alternative the Applicant to deposit in court USD 361,191/= be deposited in Court pending hearing and determination of this suit.

3. Costs in the cause.

Ruling Delivered, Dated and Signed at Nairobi this 13th day of December, 2018

RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

Naomi: **COURT ASSISTANT**

Ms. Njuguna H/B for Mr. Mahan: **COUNSEL FOR PLAINTIFF/APPL**

Mohammed Munai: **COUNSEL FOR DEFENDANT/ RESPONDENT**