



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & ADMIRALTY DIVISION**  
**HCC. NO. 267 OF 2015**

**CENTRAL BANK OF KENYA.....PLAINTIFF**

**VERSUS**

**TSAVO SECURITIES LTD .....DEFENDANT**

**STANDARD CHARTERED BANK LTD.....APPLICANT**

**RULING**

1. The Application before Court is the Notice of Motion of 14<sup>th</sup> December 2015 for the following Orders:-

**1. THAT this Honourable Court be pleased to join the Applicant herein as an Interested Party in this matter.**

**2. THAT costs of this Application be provided for.**

2. Standard Chartered Bank Limited (the Applicant) advanced to the Defendant a sum of Kshs.40,409,930/= through a facility letter of 26<sup>th</sup> April 2013.

3. It is alleged by the Applicant, in the affidavit of Boniface Machuki sworn on 14<sup>th</sup> December 2015, that the aforesaid facility was partly secured by certificates of lien over Central Bank of Kenya Treasury Bonds collectively valued at Kshs.50,450,000/= executed in favour of the Applicant by the Defendant.

4. The Applicant avers that the Defendant failed to repay the Loan facilities and shown to Court is a Board resolution of the Defendant of 30<sup>th</sup> January 2014 authorizing that the Bonds held in lien be disposed of to pay the outstanding loan with the Applicant Bank.

5. On the Strength of that resolution, the Applicant approached the Plaintiff for release of the Treasury Bonds held in lien in its favour. The Plaintiff appears to have acceded to the request but on condition that the Defendant prepared a further Board Resolution specifically indicating that the full proceeds of the remaining balance would be credited in favour of the Plaintiff.

6. It is the grievance of the Applicant that the Court, on 1<sup>st</sup> July 2014, made an order whose effects was to prevent the Defendant from carrying out the resolution. For that reason the Applicant is directly affected

by the Order and seeks to be joined as an interested party for purposes of seeking variation of that order.

7. The Defendant is opposed to the joinder and has expressed that opposition through the Replying Affidavit of Robert Kariuki Gachathi sworn on 4<sup>th</sup> April 2016. Mr. Gachathi is the General Manager of the Defendant Company. Although the Deponent states that he makes the Affidavit in response to the Applicants Notice of Motion dated 1<sup>st</sup> March 2015, the contents therein are clearly intended to answer the Application before Court. And any doubt is removed by the Defendants own submissions of 10<sup>th</sup> November 2016 in which it is stated that the said Replying Affidavit was filed in Opposition to Application of 14<sup>th</sup> December 2015 which is now before me for consideration.

8. In the main, the Defendant avers that the suit before Court pits Central Bank of Kenya and the Defendant and the Applicant is not a necessary party. That the Applicant has not demonstrated its nature of Claim through a draft Defence or Counterclaim.

9. Further, the Defendant takes the position that if the Applicant was aggrieved then it should have instituted a suit against the Plaintiff as it was aware of the present litigation for two years now.

10. The Defendant sees the application for joinder as incompetent, ill conceived and an abuse of Court process. That if allowed the Joinder will burden and delay the finalization of the suit.

11. The Court has considered the filed submissions in the context of the Application and Replying Affidavit.

12. The Application before Court is for Joinder of a Party to a suit and is brought under the Provisions of Order 1 Rule 10(2) of the Civil Procedure Rules. The Court of Appeal in the case of Civil Appeal No. 101 of 2011 **PETER NGANGA MUIRURI AND HOUSING FINANCE CO. OF KENYA LTD** (unreported) said this of Joinder of parties:-

**“As a general rule, amendment of pleadings and joinder of parties is permitted by law and it can be done at any stage of the pleadings. Such amendment should be allowed freely, if the party sought to be joined is necessary in order to enable the court to efficaciously, effectively and completely adjudicate upon, and settle all questions involved in the suit.**

**However, joinder of parties may be refused where such joinder will lead to confusing or clouding issues; the party being joined is unnecessary; unnecessary delay will result; or no cause of action whatsoever arises against the party intended to be joined. The court will also have to consider if the amendment or joinder, as the case may be, will result in prejudice or injustice to the other party which cannot be adequately compensated for in costs”.**

13. The Defendant does not dispute that the Applicant advanced to it Banking Facilities in the sum of Ksh.40,409,930/=. It does not dispute that the facilities were secured by Certificates of Lein over Central Bank of Kenya Treasury Bonds collectively valued at Kshs.50,450,000/= in favour of the Bank.

14. It is also agreed that as the Defendant defaulted on the repayment of the facilities it resolved to offset those facilities by disposing of the Bonds in Lein. The Board Resolution of the Defendant Company of 30<sup>th</sup> January 2014 speaks to that.

15. There is then the Court Order issued herein on 1<sup>st</sup> July 2014 by Hon. Gikonyo J. The Judge ordered as follows:-

**“COURT: 1) I note the Application dated 19.6.2014 has now been withdrawn by a Notice dated 1.7.2014.**

**2) The current application dated 1.7.2014 contains more details and accounts that were not in the earlier application.**

**3) I am, however, convinced the reason that persuaded the court to grant temporary relief still exist.**

**4) Accordingly, I shall issue temporary relief in terms of prayer 3 of the application except the relief shall subsist for 14 days.**

**5) The said application shall also be heard on 3.7.2014 as scheduled earlier for the withdrawn application”.**

16. Without going into any detail, the gist of the Plaintiffs application of 1<sup>st</sup> July 2014 is for an Injunction to restrain the Defendants from demanding from, or drawing from or otherwise dealing with the balance of funds, less the amount held under lein by Standard Chartered Bank Ltd in respect to the bonds of Kshs.50,450,000/= held by the Plaintiff on account of the Defendant, pending the hearing and determination of the suit before Court.

17. The effect of the order of Judge Gikonyo made on 1<sup>st</sup> July 2014 was to give temporary relief to the Plaintiff pending the hearing and determination of the Application. It would seem that those Orders still subsist.

18. Reading the Application and the Order made by the Judge, I am persuaded that the amounts injuncted do not include the amounts held in lein in favour of the Applicant Bank and the Order ought not to have troubled the Applicant Bank at all.

19. However Mr. George Kithi Counsel for the Defendant thought otherwise and advised his Clients as follows:-

**23<sup>rd</sup> October 2014**

**Tsavo Securities Limited**

**Kimathi House, 6<sup>th</sup> Floor**

**Kimathi Street**

**NAIROBI**

**Attention: ALL Directors**

**Dear Sirs,**

**Re: MILIMANI HC. CIVIL CASE NO.267/2014**

**CENTRAL BANK OF KENYA V TSAVO SECURITIES LIMITED**

**The above captioned matter kindly refers.**

**We write to inform you that any dealing with the your treasury bonds held by Central Bank of Kenya would be contemptuous as the same will be in disregard of an existing Court order issued by Hon. Gikonyo on 1<sup>st</sup> July 2014.**

**In this regard, we advise that you put in abeyance any transaction or intended transaction and/or dealing in the treasury bonds pending the hearing and determination of the case or until a time when the Court Orders otherwise.**

**Yours faithfully**

*Signed*

**George Kithi**

**Kithi & Company Advocates**

20. With that advice, the resolution made by the Defendant on 30<sup>th</sup> January 2014 to dispose of the Bonds so as to pay the Applicant would never be implemented.

21. So, while it is true, as submitted by Counsel for the Defendant, that the Applicant does not have a direct interest in the controversy between the Plaintiff Bank and the Defendant, the order of 1<sup>st</sup> July 2014 or the interpretation given to it has directly affected its interests. The question to be answered is how a Party like the Applicant, who is affected by a Court Order made in a matter in which it is not party is to challenge the Order.

22. My understanding of the Applicant's plea is that, aggrieved by the Order, it seeks to be joined as an Interested Party for purposes of seeking a variation of the Order. It does not seek to join the fray as either a Plaintiff or Defendant. In other words the Applicant is disinterested in the substantive dispute between the Plaintiff and the Defendant. In a sense the Applicant is **not** seeking to join the suit as a classic "order 1 Rule 10 necessary Party". However, it does not seem viable or even sensible that the Applicant should mount its own action, as suggested by the Defendant, to simply seek variation or clarification of the Order made herein. It is only in these proceedings that the order made on 1<sup>st</sup> July 2014 can be clarified or varied.

23. This Court has no difficulty allowing the Application for joinder but aware that, unbridled, the participation of the Applicant could muddle up the main controversy, the Court does hereby limit the participation of the Applicant to Applying for a Clarification or variation of the Court Order of 1<sup>st</sup> July 2014.

24. The Notice of Motion of 14<sup>th</sup> December 2015 is allowed subject to the Limits stated in paragraph 23 above. Costs to the Applicant.

**Dated, Signed and Delivered in Court at Nairobi this 17<sup>th</sup> day of February, 2017.**

**F. TUIYOTT**

**JUDGE**

**PRESENT;**

Mwachia for Kithi for Plaintiff

Okoth for Muchiri for Defendant

Ochieng for Muchiri for Interested Party

Alex - Court Clerk