



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION

HCCC NO. 244 OF 2016

RHODA KIBUNJA T/A

DOCUQUEST ENTERPRISES.....PLAINTIFF/APPLICANT

VERSUS

NEXT TECHNOLOGIES LIMITED.....DEFENDANT

AND

THE INFORMATION AND COMMUNICATION

TECHNOLOGY AUTHORITY.....RESPONDENT

RULING

1. Before Court is the Notice of Motion dated 5th August 2016 seeking the following Orders:-

- 1. THAT the Respondent be and is hereby ordered to supply the Applicant with a copy of the tender documents for tender number ICTA/KTCIP/ICB/26/2014-2015 submitted to the Respondent by and in the name of the Defendant within 14 days from the date of this Order.**
- 2. THAT the Respondent shall incur the costs of making the copy of the tender document referred to above.**
- 3. THAT this Honourable Court be pleased to grant any other relief it may deem fit.**
- 4. THAT the costs of this Application be borne by the Respondent.**

2. This Application was filed shortly after the Plaintiff presented a Complaint dated 22nd June, 2016. In it the Plaintiff alleges that she entered into a Joint Venture Agreement with the Defendant and thereafter put in a bid for some work with Information and Communication Technology Authority (hereinafter ICT Authority). The bid was in the name of the Defendant and was successful. The Plaintiff alleges various breaches of the Joint-Venture Agreement whose details are unnecessary for now. Ultimately the Plaintiff seeks special Damages of Kshs.31,200,000/=, General Damages for Breach of Contract and an Order for Restitution.

3. In an Affidavit sworn by the Plaintiff on 5th August 2016, she avers that, jointly with the Defendant

Directors, she prepared the Tender Document which was submitted by the Defendant to the ICT Authority. She further avers that she does not have a copy of the Document and her effort to obtain a copy thereof from the ICT Authority has been futile.

4. The Application is opposed by both the ICT Authority and the Defendant. Both filed Grounds of Opposition and in addition the Defendant filed an Affidavit through one Vincent Rariewa sworn on 14th December, 2016.

5. The Court has heard and considered the arguments for and against the Application and makes the following short observation.

6. In the Application before Court, the Plaintiff does not say that it has attempted to obtain a copy of the Tender Document from the Defendant. The Defendant on the other hand does not deny that it has a copy of the Document or can obtain a certified copy from ICT Authority.

7. Further, the Defendant does not state what prejudice it would suffer if a copy thereof was to be availed to the Plaintiff for purposes of her prosecuting her case.

8. Clearly, therefore, the Joinder of ICT Authority to these proceedings was not necessary and was ill advised. All that the Plaintiff needed to do was to seek the production of a copy of the Document from the Defendant. And this could be done in an Application or through a Case Management request under the Practice Directions relating to Case Management in this Division.

9. To elevate such a run-of-a-mill matter to a Constitutional question is to diminish the importance of the Bill of Rights assured by our Constitution.

10. I would dismiss, as I now do, the Notice of Motion of 5th August 2016 with costs to the Defendant and Respondent. Let the Plaintiff request for the Document through the process set out in the Civil Procedure Rules and/or the Practice Directions of this Division.

Dated, Signed and Delivered in Court at Nairobi this 17th day of February, 2017.

F. TUIYOTT

JUDGE

PRESENT;

Mureithi for Plaintiff

Kiongera for Njihia for Defendant

Mwachai for Respondent

Alex - Court Clerk