



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO 58 OF 2014

WOTTA HAUS LIMITED.....PLAINTIFF

VERSUS

MARY GATHONI IGIRIA

PRISCILLA IGIRIA.....DEFENDANTS

R U L I N G

1. The Plaintiff entered into a contract with the Defendants for it (the Plaintiff) to drill for the Defendants a borehole at their home at Dagoretti for an agreed consideration. The Plaintiff was unable to complete the work; it has pleaded that its equipment broke down and that despite efforts, it was not able to repair the equipment at the site. So, it sought to remove the equipment from the site in order to go and repair it, but the Defendants would not allow it to do so, insisting on completion of the contracted works first.

2. It is the Plaintiff's case that the contract between it and the Defendants was thus frustrated and lawfully terminated. It seeks in the plaint a declaration to that effect and an order for release of its drilling equipment by the Defendants.

3. Together with the plaint the Plaintiff filed **notice of motion dated 18th March 2014** seeking the main order that pending hearing and determination of the suit the Defendants be compelled by mandatory injunction to forthwith release the Plaintiff's drilling equipment. That application is the subject of this ruling.

4. The Defendants have opposed the application by **grounds of objection dated 1st April 2014** and **replying affidavit filed on that date**. The affidavit is sworn by the 1st Defendant. Grounds of opposition emerging from the two documents include -

- (i) That the Plaintiff is in serious breach of the contract between the parties in failing, refusing or neglecting to complete the contracted works.
- (ii) That the work done so far by the Plaintiff has not been assessed, and that the said exercise of assessment would be prejudiced by removal of the equipment from the site.

5. I have considered the submissions of the learned counsels appearing. No authorities were cited.

6. The Defendants have not denied that the Plaintiff's equipment broke down, or that it has not been possible to repair it at the site despite efforts to do so.

7. At the hearing of the application, learned counsel for the Defendants lamely stated that the Defendants have a lien at common law over the Plaintiff's equipment until completion of the contracted works, but she was not able to provide any authority for that proposition. She conceded however that the written contract between the parties does not provide for such lien.

8. The Defendants' learned counsel also conceded that the Defendants' remedy for the Plaintiff's breach of contract is in damages.

9. In these circumstances, why should the Defendants prevent the Plaintiff from removing its equipment from the site for repairs even when it is apparent that the same cannot be repaired at the site? What claim in law do the Defendants have over the Plaintiff's equipment? None has been demonstrated at all! And how would removal of the equipment from the site prejudice assessment of the work so far done by the Plaintiff?

10. I find the Defendants' conduct to be totally unreasonable and unacceptable. The Plaintiff has conceded that it is in breach of the contract because of the failure of its equipment. It tried to repair the equipment at the site but was unable to do so. It even offered to refund to the Defendants what they had paid over and above the work done, but they would hear none of it. Why, if not just to punish the Plaintiff for whatever reason?

11. The court will not easily grant an interlocutory order whose effect would be to determine the main suit unheard. But in this case it is clear that the Defendants have no lawful claim or lien upon the Plaintiff's drilling equipment. They have no reason to prevent it from taking away the equipment from the site. To permit this state of affairs to continue would be to perpetuate an illegality committed by the Defendants upon the Plaintiff. The court will not countenance that.

12. In the circumstances I will allow the notice of motion dated 18.3.2014 and grant the order sought in prayer 2. Costs of the application shall be in the cause. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 6th DAY OF JUNE 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 11TH DAY OF JUNE 2014