

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL CASE NO. 14 OF 2013

WEST KENYA SUGAR COMPANY LIMITED PLAINTIFF

V E R S U S

MUMIAS SUGAR COMPANY LIMITED DEFENDANT

R U L I N G

The application dated 25.4.2013 seeks orders of injunction against the defendant to the effect that the defendant be restrained from impounding the plaintiff's lorries, tractors, trailers or any other property or from interfering with the plaintiff's business activities. The application is supported by the affidavit of Gerald Okoth sworn on the same date. The respondent filed a replying affidavit sworn by Emily Kadenyi Otieno on the 27.5.2013 as well as filed written submissions. One of the prayers in the application relates to the release of a tractor registration No. KBN 436 F/ZC2586. That prayer was granted and the tractor was released.

Mr. Olendo, counsel for the applicant submitted that the defendant has kept on impounding the plaintiff's tractors which is illegal. One tractor was impounded on the allegation that it was carrying cane harvested from the defendant's contracted farmer and the cane was taken. After verification it was found that the cane was from a private farmer. That incident was undertaken by the defendant's security officers and not the police. The plaintiff relies on the cane for its business and the defendant's actions cause the plaintiff irreparable damage that cannot be compensated by way of damages. The tractor was unlawfully impounded and the applicant has established a prima facie case with probability of success.

Mr. Maura, counsel for the respondent opposed the application and relied on the replying affidavit as well as the written submissions. Counsel submitted that the cane that was impounded was from the defendant's contracted farmer. The plaintiff was transporting the cane and that was contrary to the guidelines that had been issued by the Provincial Commissioner. Under those guidelines a miller has to annex a permit for harvesting of cane and no permit was annexed when the plaintiff's tractor was impounded. The tractor that was impounded was taken to the police and the cane was confirmed to be from a private farmer. The orders being sought by the plaintiff has some implication in the sugar industry.

I have gone through the pleadings herein and it is clear to me that the same parties litigated in Kakamega HCCC 233 of 2012. Although there were other plaintiffs in that suit the issues were the same. I have seen the guidelines contained in the letter dated 30.5.2012 by the Provincial Commissioner Western Province. Under those guidelines it is clearly stated that police officers were to be provided to millers on request. The police officers to be attached to millers were cautioned not to take the law into their own hands and to carefully scrutinize ownership of the cane. It is clear to me that the intention of those guidelines is for the smooth operation of the sugar industry in Western Province. From the pleadings it is established that the plaintiff's tractor was impounded by security officers from the defendant company. This was not the scrutiny envisaged by the guidelines. If that were to be the case then a report from the police could have been attached showing that indeed it is the police who were simply trying to verify the ownership of the cane. It is therefore true that the plaintiff's tractor was impounded. The two companies are competitors in the sugar industry and none of them should allocate itself the powers to scrutinize the cane being ferried by its competitor. To allow such incidents to happen is tantamount to making one company to be the regulator of the business. All what a miller should do is to notify the police in the event that there is suspicion that cane has been harvested from its contracted farmer. The miller can deal with that farmer and claim damages from him. To allow millers to impound other millers' tractors would

lead to chaos. The guidelines are clear and it is only the police who are supposed to do the scrutiny. In the current case the alleged scrutiny was done by the defendant's security officers which should not be the case.

From the pleadings and submissions I am satisfied that the plaintiff has established a prima facie case with probability of success. The acts of impounding its tractors and lorries if not stopped can lead to irreparable damage to the plaintiff. I do find that the application is merited and the same is granted as prayed. Costs shall follow the outcome of the main suit.

Delivered, dated and signed at Kakamega this 3rd day of July 2014

SAID J. CHITEMBWE

J U D G E