



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND TAX DIVISION
CORAM: F. MUGAMBI, J
CIVIL SUIT NO. E302 OF 2024

BETWEEN

**EDENBRIDGE CAPITAL LIMITED
PLAINTIFF**

VERSUS

**SMEP MICROFINANCE BANK LIMITED 1ST
DEFENDANT**

**GLOBAL FLUX INTERNATIONAL
CONSULTANCY LIMITED 2ND
DEFENDANT**

**GRASSROOTS LINK INTERNATIONAL LTD 3RD
DEFENDANT**

RULING

Introduction and Background

1. By a Plaint dated 4th June 2024, the Plaintiff (Edenbridge) avers that on 6th May 2024 the 2nd Defendant (Global Flux Int.) accepted the 3rd Defendant's (Grassroots Links Int.) offer for a contract valued at Kshs. 424,094,825/=, which required a performance security equivalent to 5%

of the contract sum. Prior to this acceptance, on 24th April 2024, the 1st Defendant (the Bank) had issued a bank guarantee No. **SMEP/BG/TM/EBC/6714-24** for Kshs. 3,000,000/= at Edenbridge's request to finance the project.

2. On 31st May 2024, Global Flux Int. sought payment under this guarantee despite it having been issued before the contract was finalized. Edenbridge contends that this demand is fraudulent, particularly as Grassroots Link Int. had requested necessary documentation to procure a performance bond, which Global Flux Int. failed to provide and instead, issued a demand notice, frustrating the tender process.
3. Edenbridge contends that it has reported the matter to the police and asserts that Global Flux Int.'s actions are calculated to unlawfully benefit from the guarantee. Edenbridge prays for a permanent injunction restraining the Defendants from effecting or executing Tender Security Bank Guarantee No. **SMEP/BG/TM/EBC/6714-24** dated 24th April 2024 and a declaration that the said

tender security Bank Guarantee is unenforceable, null, and void.

4. Alongside the plaint, Edenbridge filed a Notice of Motion application of even date seeking to have the Defendants restrained from effecting and executing the said tender security Bank Guarantee pending the hearing and determination of the application as well as the hearing and final determination of the suit.
5. In opposition to the application, Global Flux Int. filed a Notice of Preliminary Objection dated 21st June 2024, which is the subject of this Ruling. It contends that Edenbridge's application of 4th June 2024 and the entire suit are incompetent, fatally defective, devoid of merit, and amount to an abuse of the court process.
6. It contends that Edenbridge is a stranger to the bank guarantee, not being a party thereto within the meaning of **Order 1 of the Civil Procedure Rules**, and therefore lacks *locus standi* to institute the suit. The objection further asserts that the pleadings disclose no valid cause of action against the Defendants, and that under the doctrine of

privity of contract, as codified in the Law of Contract Act, Edenbridge cannot enforce rights arising from a contract to which it is not a party. On this basis, Global Flux Int. maintains that the Court has no jurisdiction to entertain the matter.

- 7.** Grassroots Links Int. on its part confirms that Global Flux Int., indeed advertised a tender for constructing a showroom and villas, which it bid for after submitting documents and paying fees. During the process, Global Flux allegedly attempted to solicit bribes and later pressured Grassroots Links to withdraw its bid, a move that would have enabled Global Flux to claim the bid bond.
- 8.** It is the case by Grassroots Links Int. that despite issuing an award letter, Global Flux Int. failed to provide essential documents and approvals needed for Grassroots Links Int. to secure a performance bond. When they sought an extension to conduct due diligence, Global Flux Int. instead demanded payment of Kshs. 3,000,000/= under the bid bond from the Bank.

9. Edenbridge, who according to Grassroots Links Int. had procured the bid bond, was notified and instructed not to honor the demand. Grassroots Links Int. claims to have reported the fraud to the police, as it turned out that the project was fictitious and had no documents, approvals, or site evidence provided. It contends that the scheme was designed to collect fees and unlawfully claim bid bond monies, amounting to unjust enrichment.

Analysis and Determination

10. I have considered the preliminary objection and the submissions of the parties in support and opposition thereof. The first issue is whether Edenbridge has *locus standi* to institute the present suit.
11. The Supreme Court in **Matemu V Trusted Society of Human Rights Alliance & 5 Others, [2014] KESC 6 (KLR)** considered the definition of *locus standi* in the **Black's Law Dictionary, 9th Edition (page 1026)** as "*the right to bring an action or to be heard in a given forum*". Similarly, Hancox, JA in **Alfred Njau & 5 Others V City Council of Nairobi, [1983] KECA 56 (KLR)**

stated as follows on the meaning of the term *locus standi*:

“The term *locus standi* means a right to appear in Court and, conversely, as is stated in *Jowitt’s Dictionary of English Law*, to say that a person has no *locus standi* means that he has no right to appear or be heard in such and such a proceeding.”

12. It follows from these decisions that in order to determine *locus standi*, a party must demonstrate a sufficient interest in the subject matter of the suit, either by showing that it is directly affected by the impugned action or that it has a legal or contractual relationship entitling it to seek relief. Mere allegations, without documentary or contractual proof, cannot confer standing.

13. In the present case, Edenbridge has not placed before this Court any document evidencing that it procured the bid bond in question on behalf of Grassroots Links International or that it acted as

the Bank's agent in the issuance of the guarantee. The Tender Security Demand Bank Guarantee of 24th April 2024 issued by the Bank is explicit. It provided in part that:

“At the request of the Applicant, We as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of KSHS.3,000,000.00 (KENYA SHILLINGS THREE MILLION ONLY) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand. ...”

- 14.** It is plain from the terms of the guarantee that it was issued by the Bank on the instructions of Grassroots Links International, and for the benefit of Global Flux International. Edenbridge is neither named nor alluded to in the instrument, whether as applicant, agent, or beneficiary. In addition, no

documentary evidence has been tendered to demonstrate the nature or extent of loss Edenbridge would suffer were the guarantee to be enforced. Without such proof, Edenbridge's claim of interest remains speculative. The Court is guided by evidence, not assertion, and in the absence of a demonstrated legal or contractual nexus to the guarantee, Edenbridge cannot be said to possess the requisite standing to maintain these proceedings.

- 15.** The parties opposing the preliminary objection have raised allegations of fraud against Global Flux International. While such allegations are weighty I remain mindful of the grounds upon which the objection is anchored.
- 16.** The first is *locus standi*, which addresses whether a party has the legal right to appear and be heard before the Court and which I have already addressed myself to. The second is cause of action, which concerns whether the pleadings disclose a substantive claim capable of judicial determination. This distinction was aptly emphasized by the Court of Appeal in **Rajesh Pranjivan Chudasama V**

Sailesh Pranjivan Chudasama,
[2014] KECA 250 (KLR), where reference was made to the earlier decision in **Alfred Njau & Others [supra]**. The Court clarified that:

“Lack of locus standi and a cause of action are two different things. Cause of action is the fact or combination of facts which give rise to a right to sue whereas locus standi is the right to appear or be heard, in court or other proceedings; ...”

17. The court proceeded to state:

“To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the court but to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”

18. Taking guidance from the foregoing authorities and applying them to the present case, I am persuaded

that the pleadings filed by Edenbridge do not disclose any recognizable cause of action against the Defendants. As they are founded on a contract to which it is a stranger. In law, a party who is not privy to a contract cannot enforce rights or obligations arising therefrom. Consequently, even if there exists a proper cause of action arising from the conduct of Global Flux International, such a cause of action does not lie against Edenbridge. The failure or unwillingness of the proper party to institute proceedings cannot be cured by Edenbridge attempting to step into its place without proper standing.

- 19.** This is the essence of the doctrine of privity of contract, which dictates that only parties to a contract may enforce rights or obligations arising therefrom. It is on this principle that the final ground of the preliminary objection is anchored. The Court of Appeal in **Aineah Liluyani Njirah V Agha Khan Health Services, [2013] KECA 481 (KLR)**, reaffirmed the doctrine and emphasized that even its exceptions are narrow and well-defined. The Court observed:

“There are now many exceptions to the privity rule, both at common law and in the statute books. They developed in an ad hoc fashion as a response to specific situations where the courts or the legislatures ascertained a need to grant third parties the right to enforce a contract made for their benefit. Second, a third party should be able to enforce a term of the contract when the contract expressly states that the third party has a right of enforcement, regardless of whether or not the contract benefits the third party. Third, the third party should have a right to rely on a term of a contract which excludes or limits the liability of the third party, provided that was the intention of the parties.”

20. None of the exceptions mentioned above apply to Edenbridge. The bank guarantee in question does not expressly confer any rights of enforcement upon it, nor does it contain any clause intended to benefit or protect it.

Disposition

21. Accordingly, the Notice of Preliminary Objection dated 21st June 2024 is hereby upheld. The Plaintiff's suit is struck out in its entirety for want of *locus standi* and for failure to disclose a cause of action. The 2nd Defendant shall have the costs of the Preliminary Objection.

**DATED, SIGNED AND DELIVERED IN NAIROBI
THIS 30TH DAY OF JANUARY 2026.**

**F. MUGAMBI
JUDGE**

Delivered in presence of:

Mr Kenyatta for the 3rd defendant

Mr Rerimoi HB for Mr Juma for the 1st defendant

Court Assistant: Lillian

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