



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**MILIMANI LAW COURTS**  
**ELC NO. 780 OF 2017**  
**IN THE MATTER OF ARBITRATION ACT**  
**AND**  
**IN THE MATTER OF ARBITRATION DISPUTE**

**BETWEEN**

**LAKE OIL LIMITED.....PLAINTIFF**

**=VERSUS=**

**HASHI ENERGY LIMITED.....DEFENDANT**

**RULING**

1. At the hearing of Notice of Motion dated 27<sup>th</sup> December 2017, a preliminary objection was raised on behalf of the defendant on the ground that interim orders of injunction which had been given ex parte and had expired cannot be extended. The other ground was that the ex parte injunction had been given to operate against Voi Systems Limited which was not a party to the proceedings herein.

2. The defendant's counsel argued that an ex-parte injunction can only last for 14 days and the same having been issued on 28<sup>th</sup> December 2017 to last for only 14 days, the plaintiff cannot seek to have it extended after the same has expired. On the second ground, counsel for the defendant referred to paragraph 10 of the plaint where the plaintiff had averred that the defendant had sponsored a firm called Voi Systems Limited to take over Petrol Stations occupied and run by the Plaintiff.

3. The Counsel for the plaintiff opposed the preliminary objection on the ground that Order 40 Rule 4 (2) of the Civil Procedure Rules gives power to the court to extend an ex-parte injunction and that under Order 50 Rule 6, the court has power to extend time even if the time which had been fixed has expired. On the second ground, counsel for the plaintiff submitted that the plaintiff came to court because there were threats of the Petrol Stations operated by it being taken over by Voi Systems Limited and that the mention of this company in the pleadings did not mean that the company had taken over the Petrol Stations operated by the plaintiff.

4. In response, counsel for the defendant argued that an application for extension should have been made before the expiry of the 14 days . I have considered the preliminary objection and the opposition thereto by the plaintiff's counsel. In the case of **Mukisa Biscuit Manufacturing Co. Ltd. -Vs- West End**

**Distributors [1969] EA 696, Sir Charles Newbold P** had this to say regarding a preliminary objection:-

***“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.***

5. In the instant case, the plaintiff is seeking the court’s discretion to extend the ex-parte orders. This is a power which the court has and can exercise the same judiciously. It is therefore wrong for the defendant to raise a preliminary objection where this court’s exercise of discretion is sought. On the issue of Voi Systems Limited not being a party, a reading of the Plaint and the application clearly shows that the Plaintiff moved to court to prevent the defendant from giving out the Petrol Stations which the plaintiff operated which the plaintiff had learnt were in the process of being given to Voi Systems Limited. The injunction orders were not directed at Voi Systems Limited and even for argument’s sake, it is found that Voi Systems Limited had taken over any Petrol Station, this is a matter of fact to be ascertained, and no preliminary objection can be raised on those grounds. I therefore find that the defendant’s preliminary objection has no merit. The same is overruled with costs to the plaintiff.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* this **18<sup>th</sup>** day of *January, 2018*.

**E.O .OBAGA**

**JUDGE**

In the presence of :-

Mr Kigera and Mr Ogembo for Plaintiff

Mr Akelo for Dr Kiplangat for Defendant

Court Assistant: Phyllis

**E.O .OBAGA**

**JUDGE**