



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO. 780 OF 2017**

**AND**

**IN THE MATTER OF ARBITRATION ACT**

**AND**

**IN THE MATTER OF THE ARBITRATION OF DISPUTE**

**BETWEEN**

**LAKE OIL LIMITED ..... PLAINTIFF/APPLICANT**

**AND**

**HASHI ENERGY LIMITED ..... RESPONDENT**

**RULING**

1. This is a ruling in respect of a Notice of Motion dated 27<sup>th</sup> December 2017, in which the applicant seeks an interim injunction restraining the respondent or its agents from entering, retaking possession, selling, evicting or in any manner interfering with or disrupting the applicant's business pending the hearing and determination of arbitration proceedings between the applicant and the respondent. The applicant had entered into a sale agreement with the respondent in which the applicant agreed to purchase a property known as LR No.1/1338 at Kilimani in Nairobi including retail business stations listed in schedule 1 of the agreement dated 23<sup>rd</sup> September 2016.

2. The applicant paid the entire purchase price as agreed. The applicant later received a letter from the respondent's lawyers demanding payment of VAT failing which the respondent would enter, retake and sell the service stations which had been purchased by the applicant. The applicant also received another letter from Voi Systems Limited which indicated that the said company intended to take over Yaya Centre Service Station on Argwings Kodek Road and an Industrial Area Depot off Nanyuki Road. It is upon receiving these threats that the applicant moved to court and filed the present application seeking interim protection pending hearing and determination of the arbitral proceedings.

3. The applicant contends that the agreement which was entered into by it and the respondent provided for an arbitration clause in case of any dispute. The applicant had applied for arbitration of the dispute. An arbitrator has already been appointed and has already called for an initial meeting with the parties.

4. The respondent has opposed the applicant's application based on a replying affidavit sworn on 30<sup>th</sup> January 2018. The respondent contends that the properties in dispute have been transferred to a third party and that there is nothing in the dispute which is arbitrable; that the issue of VAT can only be determined by the Tax Appeals Tribunal.

5. In answer to the respondent's contention, the applicant in a supplementary affidavit sworn on 19<sup>th</sup> March 2018 contends that already the dispute has been referred to an arbitrator and that it is necessary for interim protection to be granted to preserve the subject matter of the arbitration proceedings.

6. Parties had agreed to put in their submissions. The applicant put in their submissions on 20<sup>th</sup> March 2018. On 4<sup>th</sup> April 2018 when a ruling date was set, the respondent had not filed its submissions. The respondent was given an opportunity to file its submissions. As at the time of writing this ruling, no submissions had been received from the respondent. I have considered the applicant's as well as the opposition thereto by the respondent. I must now determine whether to grant the injunction as sought or not.

7. There is no doubt that the applicant and the respondent entered into an agreement on 23<sup>rd</sup> September 2016. There is also no doubt that the entire purchase price was paid. The only contention appears to be on VAT payable. The applicant contends that there is no issue of payment of VAT in the agreement. The respondent has not released completion documents to enable the purchased properties to be registered in the applicant's name so that it can be able to enter into contracts with retailers in the service stations. This dispute has been referred to arbitration. The arbitrator has already been appointed and has called for the first meeting according to the letter by the appointed arbitrator annexed to the supplementary affidavit of the applicant.

8. There is evidence that the respondent has threatened to re-take and sell the properties which were already sold to the applicant. A company called Voi Systems Ltd wrote to the applicant on 7<sup>th</sup> December 2017 and indicated that it was intending to take over the Yaya Centre Petrol Station and a depot in industrial area. The purpose of an injunction in a case where the dispute has been referred to arbitration is to preserve the subject matter pending the determination of the dispute. This is to ensure that the arbitral proceedings are not rendered nugatory. I entirely agree with the decision of *Lady Justice Kamau* in **Talewa Road Contractors Limited Vs Kenya National Highways Authority (2014) eKLR and Italbuild Imports Limited Vs AIC Kijabe Hospital and another (2015) eKLR** where the Judge correctly stated that the concern of the court is to determine whether there is a valid arbitration agreement and if indeed the subject matter of the arbitration proceedings is in danger of being wasted or dissipated so as to preserve the same.

9. The alleged conduct of the applicant in its service stations is not material to what is before the court. What is clear is that the applicant has made out a clear case for grant of interim protection. I therefore find that the applicant's application has merits. I allow the Notice of Motion dated 27<sup>th</sup> December 2017 in terms of prayer (3) and (4).

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **28<sup>th</sup>** day of **June 2018**.

**E.O.OBAGA**

**JUDGE**

In the absence of parties who were aware of the date and time of delivery  
of ruling.

Court Clerk: Hilda

**E.O.OBAGA**

**JUDGE**