



Bia Tosha Distributors Limited v Kenya Breweries Limited & 3 others (Petition 249 of 2016) [2023] KEHC 2818 (KLR) (Constitutional and Human Rights) (30 March 2023) (Directions)

Neutral citation: [2023] KEHC 2818 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION 249 OF 2016

HI ONG'UDI, J

MARCH 30, 2023

BETWEEN

BIA TOSHA DISTRIBUTORS LIMITED PETITIONER

AND

KENYA BREWERIES LIMITED 1ST RESPONDENT

UDV (KENYA) LIMITED 2ND RESPONDENT

EAST AFRICAN BREWERIES LIMITED 3RD RESPONDENT

DIAGEO PLC 4TH RESPONDENT

DIRECTIONS

1. This matter was forwarded to this Court for hearing following the Judgment of the Supreme Court of Kenya delivered on 17th February 2023. The decree of the said Court is as follows:
 - i. That the appeal dated 20th August 2020 be and is hereby allowed;
 - ii. That the judgment and orders of the Court of Appeal in Civil Appeal No. 163 of 2016 delivered on the 10th July 2020 be and are hereby set aside in entirety;
 - iii. That the High Court orders of 29th June, 2016 be and are hereby reinstated and the Court do consider the consequences of any disobedience of those orders;
 - iv. That the matter be and is hereby remitted to the High Court for disposal of the Amended Petition dated 20th June 2016 pending before the High Court on priority basis; considering the age of this matter;



- v. The costs in the Court of Appeal and in this Court are awarded to the appellant as against the 1st and 2nd respondents.
2. Before the Court are two Notices of Motion dated 23rd February 2023 and another one undated filed by Okoth & Kiplagat advocate for the petitioner. The supporting affidavit is dated 8th March 2023.
3. Responses have been filed by the respondents to the petitioner's Notice of Motion. In response to the Notices of Motion dated 23rd February 2023 the Petitioner filed the Notice of Motion, presumably dated 8th March 2023.
4. The Applications were listed for mention on 29th March 2023 for directions. All the parties were ready for the taking of directions save for the petitioner whose counsel (Dr. Kiplagat) informed the Court that the 1st & 2nd respondents were in contempt of the Supreme Court Judgment when they filed the two Notices of Motion. As a result he had filed an application before the Supreme Court citing the said respondents for contempt.
5. I have had a chance of reading the decree from the Supreme Court remitting the matter to this Court for hearing, on priority basis.
6. Counsel for the petitioner/Applicant urges this Court to stay the proceedings before it because of the contempt application he has filed before the Supreme Court. The Supreme Court aware of the orders it issued on 17th February 2023 did not order stay of proceedings of this Court upon the filing of the petitioner's application before it. Had there been a good reason for the proceedings herein to be stayed I am pretty sure the Supreme Court would have issued orders to that effect. There is no application pending before the said Court seeking stay of these proceedings, and neither has any order of stay of proceedings herein been issued, and/or filed herein.
7. The Notice of Motion herein by the Petitioner is seeking to have the two Notices of Motion expunged from the record. Counsel argues that the 1st & 2nd respondents were to only appear before this Court to purge the contempt before anything else. All I can say at this point is that the contempt application at the Supreme Court relates to the Supreme Court orders. This Court will deal with the applications filed before it and make an appropriate determination. In view of the above I hereby issue the following directions;
 - i. All the Applicants in the 3 applications to file and serve their written submissions within 10 days.
 - ii. The Respondents in the said applications including the Interested Party to file and serve their responses within 10 days upon service of the applicants' submissions.
 - iii. Parties to clearly indicate in their submissions the application to which the submissions relate.
 - iv. Mention on 26th April 2023 to confirm compliance and further directions.
- 8 Orders accordingly.

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 30TH DAY OF MARCH, 2023 IN OPEN COURT AT MILIMANI, NAIROBI.

H. I. ONG'UDI

JUDGE OF THE HIGH COURT

