



**Manchester Outfitters Suiting Division Now Called King Woolen Mills Ltd & another
v Standard Chartered Financial Service Limited & another (Civil Case 340 of 2006)
[2023] KEHC 26472 (KLR) (Commercial and Tax) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26472 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE 340 OF 2006
A MABEYA, J
DECEMBER 15, 2023**

BETWEEN

**MANCHESTER OUTFITTERS SUITING DIVISION NOW CALLED KING
WOOLEN MILLS LTD 1ST PLAINTIFF
GALOT INDUSTRIES LTD 2ND PLAINTIFF
AND
STANDARD CHARTERED FINANCIAL SERVICE LIMITED . 1ST DEFENDANT
A.O GREGORY & C.D CAHILI 2ND DEFENDANT**

RULING

1. The Motion dated 17/11/2023 by the plaintiff is brought under Order 18 Rule 9 of the [Civil Procedure Rules](#). It seeks the variation of the hearing dates of 11th through 14th March, 2024 to a date earlier than 6/1/2024. The application was supported by the affidavits of Mohan Galot and Daniel Kabiru sworn on 17/11/2023.
2. The grounds thereof are that Daniel Kabiru has testified for the plaintiff but yet to be cross examined by the 2nd defendant has since gotten a job outside the country and will be leaving Kenya before 6/1/2024. That he will not be able to return for further cross examination on either of the days the matter is fixed for hearing.
3. The application is opposed by the 2nd defendant through the replying affidavit of Paul Chege, Advocate. He deposed that the said witness is due to be cross examined on 11th through 14th March, 2024 in open Court. That the said witness can be heard virtually. That the Advocate was fully engaged in pre-trials and other matters until the end of term. That no dates should be imposed on him.



4. I have considered the representations by the Learned Counsels and the contestations of the parties. It is not in dispute that the witness has hitherto been cross examined at length by the 1st defendant. The last time the matter was in Court Mr. Chege implored the Court to grant him time to prepare his cross examination so that he would take a short time in his cross examination.
5. I note that the witness is leaving the jurisdiction of the Court by 6/1/2024. Wherever he is going to be employed, no one can be sure if he will be granted time to attend this Court. He has stated that he may not return soon.
6. The Court has to balance between the fights of the parties. If the witness goes without cross examination, that would prejudice the 2nd defendant and the plaintiff. If the court imposes a near date Mr. Chege says he is very busy he will not do a good job on the case.
7. That being the case, balancing the competing interests of the parties, I would impose the date of 17/1/2024 for cross examination and re-examination. Let the plaintiff prevail over the witness to wait and post pone his departure for at least 2 weeks. It will not be demanding too much if he did so.
8. Accordingly, I allow the application. I direct that PW1 does attend Court on 17/1/2024 at 8.30am for cross examination and re-examination.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 15TH DAY OF DECEMBER, 2023.

A. MABEYA, FCI Arb

JUDGE

