



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**COMMERCIAL AND TAX DIVISION**

**CIVIL SUIT NO. 846 OF 2001**

**KANN GREENS LIMITED.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**DANPOULT LIMITED.....2<sup>ND</sup> PLAINTIFF/RESPONDENT**

**- VERSUS -**

**NATIONAL BANK OF**

**KENYA LIMITED.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**GARAM INVESTMENTS.....2<sup>ND</sup> DEFENDANT**

**(By original action)**

**NATIONAL BANK OF KENYA LIMITED.....PLAINTIFF**

**-VERSUS-**

**KANN GREENS LIMITED.....1<sup>ST</sup> DEFENDANT**

**DANPOULT LIMITED.....2<sup>ND</sup> DEFENDANT**

**DAVID NG'ANG'A KAMAU.....3<sup>RD</sup> DEFENDANT**

**JOSEPHINE WAMBUI NG'ANG'A.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. In this suit, when it was filed on **7<sup>th</sup> June, 2001**, **KANN GREENS LIMITED** (*herein after referred to as Kann*) was the **1<sup>st</sup> Plaintiff**, **DANPOULT LIMITED** (*herein after referred to as Danpoult*) was the **2<sup>nd</sup> Plaintiff** while **NATIONAL BANK OF KENYA LIMITED** (*herein after referred to as NBK*) was the **1<sup>st</sup> Defendant** and **GARAM INVESTMENT** was the **2<sup>nd</sup> Defendant**. Subsequently the suit against the **2<sup>nd</sup> Defendant** was withdrawn.

2. NBK filed its defence and counter-claim. In that defence and counter claim **Kann** became the **1<sup>st</sup> Defendant**, **Danpoult** the **2<sup>nd</sup> Defendant**, and **Ng'anga kamau** and **Josephine Wambui Ng'ang'a** were the **3<sup>rd</sup>** and **4<sup>th</sup>** defendants respectfully (who collectively shall be referred to as defendants in the counter-claim).

3. This court, by the Ruling delivered on **20<sup>th</sup> March, 2003**, struck out the plaint filed by **Kann** and **Danpoult** and entered judgment as follows:

**(a) Judgment in favour of NBK as against Danpoult for Ksh 1,569,605.25 with interest at 29% per annum from 21<sup>st</sup> March 2003 until payment in full;**

*(b) Judgment in favour of NBK as against Kann, Danpoult, David Ng'ang'a Kamau and Josephine Wambui Ng'ang'a, jointly and severally for Ksh 7,505,902.85 with interest at 26% per annum from 20<sup>th</sup> March 2003 until payment in full; Judgement for Ksh 9,584,806.05 with interest at 28% per annum from 20<sup>th</sup> March, 2003 until payment in full; and Judgment for Ksh 41,437.60. Kann and Danpoult were ordered to pay NBK costs of the original suit. Kann, Danpoult, David Ng'ang'a Kamau and Josephine Wambui Ng'ang'a were ordered to pay to NBK costs of the counter-claim.*

4. NBK has moved this court by *Notice of Motion* dated 20<sup>th</sup> March, 2017 seeking prayers:

*a. That NBK be granted leave to execute the decree against the Principal Directors of Kann and Danpoult;*

*b. That Mrs Josephine Wambui Ng'ang'a, David Ng'ang'a Kamau, Kibaki Muriithi and Mrs Anne Nduta Kibaki, the Principal Directors of Kann and Danpoult be orally examined on oath as to the assets and liabilities of companies Kann and Danpoult and be ordered to produce the books of account of those companies.*

*c. That in default of such attendance by those Principal Directors, they be ordered to settle the decree herein.*

5. The application was supported by the affidavit of **Paul Chelang'a** who is NBK's debt recovery manager. By his affidavit the deponent deponed that **Kann** and **Danpoult** have failed to make payment to satisfy the decretal amount. That those two companies are defunct, no longer trading and with no official premises. The deponent deponed that NBK desires to execute the decree against the Principal Directors of the two companies.

6. Although learned counsel for the defendants in the counter-claim was served with the application under consideration and the hearing notice for 3<sup>rd</sup> May 2018, when the application was heard by the court, no papers were filed in opposition to the application and there was no attendance in court on 3<sup>rd</sup> May 2018 by the said counsel for the defendants in the counter-claim.

7. From the summary, above, of the background of this case it is clear that NBK has Judgment against the very directors it seeks to cross examine on the assets of the companies. In respect to that Judgment it is not clear why it has not proceeded to execute.

8. This court does have statutory discretion to order cross examination of directors of a debtor company. Such cross examination is intended to aid in asset disclosure. In this case **NBK** has deponed that it has been unable to obtain assets owned by **Kann** and **Danpoult**. It is in the court's view appropriate to order the cross examination of the directors as sought. The amount owed by the companies to **NBK** is significant to justify such cross examination.

9. Accordingly, because law allows for examination of officers of a corporation the orders of the court are as follows:

*a. Mrs. Josephine Wambui, David Ng'ang'a Kamau, Mr. Kibaki Muriithi and Mrs. Anne Nduta Kibaki are hereby ordered to attend court to be orally examined on oath as to the assets and liabilities of KANN GREENS LTD and DANPOULT LTD to produce the books of account and all other documents.*

*b. In default of such attendance Mr. Kibaki Muriithi, Mrs. Anne Nduta Kibaki, Mrs. Josephine Wambui Ng'ang'a and David Ng'ang'a Kamau will settle the decree in their individual capacity as directors and shareholders of KANN GREENS LTD and DANPOULT LIMITED.*

**DATED, SIGNED and DELIVERED** at **NAIROBI** this 22<sup>nd</sup> day of **May** 2018.

**MARY N. KASANGO**

**JUDGE**

**Ruling read in open court in the presence of**

Court Assistant.....Sophie

.....for the Plaintiff

.....for the 1<sup>st</sup> Defendant

.....for the 2<sup>nd</sup> Defendant

.....for the 3<sup>rd</sup> Defendant

.....for the 4<sup>th</sup> Defendant