

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL CASE NO. 95 OF 2018

JUJA COFFEE EXPORTERS LIMITED.....PLAINTIFF

VERSUS

1. NATIONAL BANK OF KENYA LIMITED

2. VIRGIN PACKAGING LIMITED.....DEFENDANTS

R U L I N G

1. There being no opposition to the request by the plaintiff to file and serve a supplementary affidavit, leave is granted to the counsel to file and serve same within 7 days from today.
2. On leave to amend, I notice that the statement of defence was filed today hence the pleadings are yet to close and accordingly under Order 8 Rule 1, it would be a superfluity to grant to the plaintiff any leave to amend. However as the plaintiff came to court under Certificate, any amendment shall be done within 7 days from today.
3. On request to grant an interim Order of injunction, I have read the Replying Affidavit of Paul K. Chaelanga which admit the fact that there has been a sale by private treaty to one Bakhresa Grain Milling (Kenya) Ltd who in turn has assigned its interests to one Ms. Grain Bulk handlers Ltd.
4. The question that arises is what would remain of the plaintiffs suit once the sale is concluded and transfers effected. I see a scenario in which the very substratum of the dispute shall have been effectively destroyed and would have to be reconstructed by inclusion of other parties not party before me as at today.
5. Without going to the merits of the plaintiffs case and that by the Defendant, I consider it just and fair that I do not allow the substraction of the dispute to be dissipated if there has to be sustained a dispute to be determined and resolved by the court. I consider it just and expedient that the subject matter of this litigation be reserved in that no further steps be undertaken to alienate the property pending further orders of the court.
6. Having so said, and it appearing to court that the sums in dispute is colossal, I do direct that the matter be fast tracked and heard before the terms ends on 20/12/2018.
7. Consequently, let the defendant be at liberty to file any further affidavit within 7 days from today. Once served with supplementary affidavit parties shall file and exchange written submissions with regard to the application dated 7/11/2018. Hearing shall be on 19/12/2018.
8. It is so ordered.

Dated and delivered at **Mombasa** this 27th day of **November 2018**.

P.J.O. OTIENO

JUDGE