



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**COMMERCIAL AND TAX DIVISION**

**CIVIL SUIT NO. 168 OF 2007**

**BUTALI SUGAR MILLS LIMITED.....PLAINTIFF**

**VERSUS**

**WEST KENYA SUGAR COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT**

**KENYA SUGAR BOARD.....2<sup>ND</sup> DEFENDANT**

**RULING**

[1] When this matter came up on **10 November 2017** for Case Management Conference, Counsel for the 1<sup>st</sup> Defendant, **Mr. Goswami**, raised the issue of non-compliance by the Plaintiff with the Interrogatories that he filed and served on its **Counsel, Triple OK Law Advocates**, dated **4 October 2017**, whereby the 1<sup>st</sup> Defendant sought answers to a set of 24 interrogatories. He sought the Court's directions, granted that the Plaintiff was yet to comply; while the Defendant had already complied with a similar process at the instance of the Plaintiff. **Mr. Bwire**, Counsel for the Plaintiff, on his part submitted that the Plaintiff was under no obligation to respond to the interrogatories, contending that the law has since changed with the **2010** amendments to the **Civil Procedure Act, Chapter 21 of the Laws of Kenya**, and the **Civil Procedure Rules** thereunder. He added that they replied to the request by **Mr. Goswami** and stated why they found it unnecessary to respond to the Interrogatories. According to him, there is no jurisdiction in the new Civil Procedure Rules to deal with interrogatories.

[2] **Mr. Bwire** further submitted that the questions sought to be answered by the Plaintiff are questions that form the subject of cross-examination and therefore that, rather than advancing the expeditious disposal of this suit, their effect would be to further delay the disposal of this matter; and that, in any case, there was no court order obtained before the Interrogatories were served. He relied on the case of **Arthur Papa Odera vs. British Council [2007] eKLR** in support of his submissions and urged the Court to find and hold that the Plaintiff is not obliged to answer the Interrogatories.

[3] **Mr. Bwire's** posturing was adopted by **Mr. Kemboy** for the 2<sup>nd</sup> Defendant, whose submission was that this is an old suit; and that it would be in the interest of all the parties to have it heard and determined without any further delay. He pointed out that the suit is predicated on an alleged Undertaking that was issued by the 2<sup>nd</sup> Defendant in favour of the Plaintiff; and argued that unless the Interrogatories go to the root of the subject matter of the suit and the propriety of it, then they would not serve to shorten the trial time; and therefore ought to be disallowed.

[4] Needless to say that the procedure of interrogatories was provided for in **Order X** of the old **Civil Procedure Rules**; and that the main purpose thereof was the expeditious disposal of cases by shortening the trial time. With the enactment of the **Civil Procedure Act, 2010 and the Rules** thereunder, it would appear that the procedure was done away with, for it is not expressly provided for in **Order 11** of the **Civil Procedure Rules**, which has now replaced what used to be **Order X**. More importantly however, is the fact that, in commercial matters such as this, the application of **Order 11** of the **Civil Procedure Rules** has been expressly ousted by the **Practice Directions relating to Case Management in the Commercial and Admiralty Division of the High Court at Nairobi, Gazette Notice No. 5179 of 25**

**July 2014.** Paragraph 1 thereof is explicit that:

**"It is hereby ordered pursuant to Order 11 Rule 1 of the Civil Procedure Rules, 2010 that all suits commenced by Plaintiff or Originating Summons and proceeding to hearing in the Commercial & Admiralty Division of the High Court in Nairobi are exempt from Order 11 of the Civil Procedure Rules."**

[5] Thus, even if I were to find that the Interrogatories procedure has been carried over by the Civil Procedure Rules as amended, that procedure has been superseded by the Practice Directions which make no direct mention of interrogatories. I however note that both in the prescribed forms for Case Management Checklist and Case Management Questionnaire, provision is made for interrogatories at Paragraphs 20 of **Appendix A** and Paragraph 16 of **Appendix B**, respectively. What this portends, to my mind, is that a party is not necessarily precluded from making a request for interrogatories for consideration at the Case Management Conference. Consequently, it would be premature for a party to purport to serve and expect a response to interrogatories before the directions of the Court in that regard at the Case Management Conference. It would follow therefore that Counsel for the 1<sup>st</sup> Defendant was evidently hasty in serving the Interrogatories dated **6 October 2017** prior to the Court's directions. In any event, he did not give any such indication by way of a Case Management Request in the form prescribed under **Appendix B**.

[6] The foregoing being my view, and granted that the case of **Arthur Papa Odera vs. British Council** (supra) was decided prior to **2010**, I find it unnecessary to get into a consideration of whether the Interrogatories meet the two-test threshold of **technical** and **merit competence**. I would therefore find that the Interrogatories are incompetent for having been prematurely filed and served; and are hereby struck out, but with no order as to costs.

It is so ordered.

**DATED, SIGNED DATED AND DELIVERED AT NAIROBI THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2017**

**OLGA SEWE**

**JUDGE**