



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL & ADMIRALTY DIVISION
CIVIL CASE NO. 29 OF 2016

MAXAM LIIMITED 1ST PLAINTIFF/APPLICANT

MODERN LANE LIMITED 2ND PLAINTIFF/APPLICANT

OLEPASU TANZANIA LIMITED 3RD PLAINTIFF/APPLICANT

VERSUS

HEINEKEN E.A. IMPORT CO. LTD 1ST DEFENDANT/RESPONDENT

HEINEKEN BROUWERIJEN B. V 2ND DEFENDANT/RESPONDENT

HEINEKEN INTERNATIONAL B. V 3RD DEFENDANT/RESPONDENT

RULING

The application herein is a **Notice of Motion** dated 3rd June 2016. The same is brought under section 1A, 1B, 3A and 95 of the Civil Procedure Act, Chapter 21 of the Laws of Kenya, Order 8 Rule 6, and Order 51 Civil Procedure Rule 2010 and all the enabling provision of the law.

The application is seeking for order that:

1. *Pending the hearing and determination of this application the court do suspend the time required of the Applicants to file their amended statement of Defence and counter claim.*
2. *That the court do enlarge time for filing an Amended Statement of Defence and counter claim.*
3. *That the court do give a time of 30 days within which the Amended Statement of Defence and counter claim is to be filed and served.*
4. *The costs of the application be provided for.*

The application is based on the grounds set therein, and is supported by an affidavit sworn by Austin L. Ayisi. It was filed in court under certificate of urgency on 3rd June 2016. Upon hearing the said application the court ordered that it be served for inter-parties hearing on 6th June 2016. On 6th June 2016, the Applicants were present in court, but the Respondents were not represented. A perusal of the court file revealed that the Respondents were served with the Application and hearing notice on the 3rd day of June 2016, for inter parties hearing on 6th June 2016. The affidavit of service was filed in court on

6th June 2016, to that effect. It indicated that the application and hearing notice were received and acknowledged by the firm of Nyachoti & Co. Advocates, who are on record for the Respondents.

The application was then heard ex parte and as unopposed. In his submissions, Mr. Aisi who appeared for the Applicant told the court that the Defendant's counter claim is a liquidated claim and they require a report to quantify the loss of profits and business opportunities. That same is being prepared by the firm of Ernst and Young LLP, and though underway it is not ready. He told the court that, the said firm will require a further 30 days to finalise the same. That he informed the Respondents' counsel of the same vide a letter dated 2nd June 2016. He submitted that the grant of prayers sought will not cause any prejudice to the Respondents as the court can still grant the Respondents leave to file a reply to the amended defence and a defence to the counter-claim.

I have now considered the application, the prayers sought therein, the grounds and affidavit in support. In a nutshell the Applicant's avers that in order to quantify the counter-claim, they require a report to support the quantum for loss of profits and loss of business opportunities arising from the exclusive distribution between the Plaintiffs and the Defendants. That the 21 days they were granted to file a defence and counter claim expired on 3rd June 2016. They submit that they will suffer immense prejudice if the application is not allowed as prayed.

In conclusion I find that the application herein has merit in that it will allow the Applicant to avail all the required documents and/or evidence to enable the court arrive at a fair and just decision in this matter. I also note that the application is not opposed and, the Respondents will not suffer any prejudice if the application is allowed as the Plaintiff will be at liberty to reply to the amended defence and counterclaim.

I therefore allow the application in terms of prayers 2, 3 and 4 accordingly. The costs thereof will be in the cause.

Orders accordingly.

G. NZIOKA

Read in open court and dated on this 16th day of June 2016.

G. L. NZIOKA

JUDGE

Delivered before

..... for the Plaintiff

..... for the Defendants

Teresia C/Clerk