



**REPUBLIC OF KENYA**  
**IN THE HIGH OF KENYA AT MOMBASA**

**CIVIL CASE NO. 199 OF 2012**

**DIAMOND INDUSTRIES LIMITED .....PLAINTIFF**

**VERSUS**

**MISS JAHANARA GULAM**

**MUSTAFA MUSA.....1<sup>st</sup> DEFENDANT**

**JAMAL ABDULKARIM MUSA .....2<sup>nd</sup> DEFENDANT**

**(ALL T/A TAANZYM STORES)**

**RULING**

1 The plaintiff DIAMOND INDUSTRIES LTD filed this suit seeking judgment against 1<sup>st</sup> and 2<sup>nd</sup> defendants trading as Taanzym Stores. The plaintiff's claim of Ksh 18,420,795 was in respect of goods supplied to the defendants on credit.

2 The defendants by their defence dated 6<sup>th</sup> February denied the plaintiff's claim and pleaded that the goods were received by a company called Rising Star Limited. That is the only defence offered against the plaintiff's claim.

3 This Ruling concerns the Chamber Summons dated 4<sup>th</sup> March 2015. It is filed on behalf of the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant seeks that the case against her be dismissed for non-jonder. That prayer is premised on the 1<sup>st</sup> defendant's deposition in her affidavit sworn on 4th March 2015 in support of the Notice of Motion. She stated therein:

***That I am the 1<sup>st</sup> defendant in this suit.***

***That Taanzym stores was set up in the 2005.***

***That initially I was a partner in the above mentioned business.***

***That on or about January 2009, I ceased to be a partner of I tendered my resignation and ceased to be a partner in Taanzym stores ( Annexed hereto is a copy of Form BN/5 for Taanzym stores marked :JGM-1")***

***That the alleged supply of goods in question in this matter by the plaintiff was concluded on or about February 2010.***

***That therefore at all material times, and specifically when the goods in question were being supplied to Taanzym stores , I had ceased to be a partner of Taanzym stores.***

***That I was not and could not have been involved at all with the operation of Taanzym stores at any time on or about February 2010.***

***That after my resignation as a partner in January, 2009 I did not have any further dealings with Taanzym stores.***

4 The exhibit mentioned in the 1<sup>st</sup> defendant's affidavit marked as "JGM-1" is a certificate of Registration of change of particulars done under the registration of Business names Act.

5 I have considered the plaintiff's replying affidavit the submissions made before court by counsels and in short the only words that describe the application is "misconceived and bad in law and fact."

6 The exhibit "JGM-1" shows the changes made to the firm business Taanzym stores was done on 4<sup>th</sup> February 2010. It is not clear from that exhibit what exactly the changes were made on that day. The certificate in the pertinent part states:

***"...TANZYM STORES which business name was originally registered under the provisions of the Registered of Business names Act on 25<sup>th</sup> day of January 2005 under Number 408364 consequent on the registration of such Change in particulars JAMAL ABDULKARIM MUSA are now registered as carrying on business at Plot No. 40 Biashara Street Kitui P.O. Box 400 KITUI..."***

The exhibit is dated 4<sup>th</sup> February 2010.

7 My comments regarding that certificate are; firstly there is no indication that the 1<sup>st</sup> defendant resigned from Taanzym Stores. Secondly the plaintiff by its plaint claims that the goods the subject of the debt which is the subject of this suit occurred between 2009 and 2010.

8 Order 1 Rule 9 of the Civil Procedure rules provides that a suit shall not be defeated by mis-joinder or non-joinder.

9 The learned author Stuart Sime in the book A Practical to Civil Procedure had this to say on joinder of parties.

***"a part from the operation of the overriding objective, the only restriction against joinder of parties appears to be that there must be a cause of action against each of the parties joined."***

10 I find and hold that there is a disclosed cause of action against the 1<sup>st</sup> defendant.

11 The Notice of Motion dated 4<sup>th</sup> March 2015 should not have been filed. The 1<sup>st</sup> defendant if indeed she was not a partner in the firm Taanzym stores when the debt was incurred should have clear evidence of resignation and even if she was able to show that evidence it can only be useful to her defence and not otherwise.

## **CONCLUSION**

12 **The Chamber Summons dated 4<sup>th</sup> March 2015 is dismissed with costs to the plaintiff.**

Dated and delivered at Mombasa this 24<sup>th</sup> day of August 2015

**MARY KASANGO**

**JUDGE**

24.8.2015

Coram

Before Justice Mary Kasango

C/Assistant –

For: Appellant:

For Respondent:

Court

The judgment is delivered in their presence/absence in open court.

**MARY KASANGO**

**JUDGE**