



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE NO.2503 OF 1995**

**MACMILLAN KENYA (PUBLISHERS) LTD.....PLAINTIFF**

**VERSUS**

**MOUNT KENYA SUNDRIES LTD ..... DEFENDANT**

**RULING**

By Chamber Summons dated 17<sup>th</sup> February 2015, and filed in court on 26<sup>th</sup> March 2015, the plaintiff Macmillan Kenya Publishers Ltd seeks from this court under Order 20 Rules 3 and 4 of the Civil Procedure Rules and under the inherent power of the court orders that:

1. An inquiry as to damages or an account of profits payable to the plaintiff by the defendants be made.
2. The costs of this application be provided for.

The application is predicated on the grounds:

1. Judgment was delivered on 23<sup>rd</sup> October 2008 and the court granted the plaintiff's claim as prayed in the plaint.
2. Among the prayers granted was an order for inquiry as to damages or alternatively an account of profits and payment of all sums found due upon taking such inquiry.
3. The parties have since delivery of the judgment been negotiating on a without prejudice basis towards reaching an out of court settlement as to the damages payable to the plaintiff but no settlement has been reached.
4. In the circumstances, it is necessary and in the interest of justice that orders sought herein be granted.

The application is further supported by the affidavit of David Mutai Managing Director of the Plaintiff Company reiterating the grounds upon which the application is predicated and annexures.

The defendant opposed the application by filing a replying affidavit sworn on 15<sup>th</sup> June 2015 by Kuldip Sapra.

I have perused the application and the response thereto. The nature of this application is one which can be heard and disposed of by the Deputy Registrar of the High court pursuant to the powers conferred by Order 49 Rule 7(1) (viii).

Accordingly, I direct that this matter be placed before the Deputy Registrar for a rehearing. Hearing on 19th November 2015 before the Deputy Registrar, High Court Civil division.

Orders accordingly.

**R.E. ABURILI**

**JUDGE**

**23/10/2015**

23/10/2015

Coram before R.E. Aburili J

C.A. Adline

Mr. Odongo holding brief for Opiny for respondent

Miss Kariuki holding brief for Murugara for plaintiff.

**COURT-** Ruling read and delivered in open court as scheduled. The file to be placed before the Deputy Registrar on 19<sup>th</sup> November,2015 for hearing consideration of the application dated 17<sup>th</sup> February 2015.

**R.E. ABURILI**

**JUDGE**

**23/10/2015**