



**REPUBLIC OF KENYA**

**High Court at Mombasa**

**Civil Case 276 of 2008**

**AWAL LIMITED.....PLAINTIFF**

**VERSUS**

**HUSSEIN DAIRY LTD. & OTHERS.....DEFENDANT**

**RULING**

Before court is the plaintiff/applicant's chamber summons dated 5<sup>th</sup> February, 2009 brought under Order VI rule 8(2) of the old Civil Procedure Rules. In this application the applicant requests particulars based on various aspects of the respondent's statement of defence and counter-claim dated 3<sup>rd</sup> November, 2008. Having perused the file I note that the defendants did also make by way of chamber summons dated 3<sup>rd</sup> December, 2008 a similar request for particulars also brought under Order VI rule 8(2) of the old Civil Procedure Rules. By a consent dated 18<sup>th</sup> March, 2009 it was agreed between the parties that the two applications be heard together. It was further agreed that the application be argued by way of written submissions. By 19<sup>th</sup> April, 2011 both parties had filed their written submissions and all that now remains is for this court to render its ruling on the same.

I have carefully perused the written submissions filed by **MR. LIJOODI** for the applicant and **MR. SITONIK** for the respondent. It is clear that each side have a long list of particulars which they seek from the other side. It is imperative to note that both applications were made and filed in court under the **old** Civil Procedure Rules. This was before the new Civil Procedure Rules of September, 2010 came into effect. It is my view that all the matters raised for determination in the two applications are effectively dealt with under Order 11 of these new Civil Procedure Rules – **PRE-TRIAL DIRECTIONS AND CONFERENCES** – specifically Order 11 rule 3 which provides for a case conference would dispose of the issues raised. Order 54 of the New Civil Procedure Rules deals with **REVOCATION AND TRANSITIONAL PROVISIONS** and Order 54 rule 2 provides:

**“In all proceedings pending whether preparatory or incidental to or consequential upon any proceedings in court at the time of the coming into force of these rules, the provisions of these rules shall thereafter apply, but without prejudice to the validity of anything previously done provided that:**

**(a) If and in so far as it is impracticable in any such proceedings to apply the provisions of these rules, the practice and procedure heretofore detaining shall be followed.**

**(b) In any case of difficulty or doubt the Chief Justice may issue practice notes or directions as to the procedure to be adopted.”**

It is clear therefore from Order 54 that these Civil Procedure Rules will be applicable to all matters and issues raised before they came into force. Therefore it is my view that these requests for particulars filed by both parties would be far better handled by Order 11 of the new Civil Procedure Rules. I therefore direct that the parties do now proceed in line with the said Order 11 of the New Civil Procedure Rules.

**Dated and delivered in Mombasa this 28<sup>th</sup> day of March, 2013.**

**M. ODERO**

**JUDGE**

In the presence of:

Ms. Mbulika h/b Mr. Taib for Plaintiff

No appearance by Respondent  
Court Clerk Mutisya