

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL AND ADMIRALTY DIVISION

CIVIL CASE NO 370 OF 2013

UNILEVER KENYA LIMITED..... PLAINTIFF

VERSUS

PROCTER & GAMBLE

INTERNATIONAL OPERATIONS SA.....1ST DEFENDANT

PROCTER & GAMBLE SERVICES LIMITED.....2ND DEFENDANT

SCANGROUP LIMITED.....3RD DEFENDANT

RULING

1. I have carefully listened to the oral submissions by counsel for the Plaintiff and the Defendants and right at the outset note that this is an extremely contentious matter. Very weight issues have been raised by the Plaintiff and although the Defendants were served on 13th September 2013, it would be unfair and grossly unjust for the Defendants to be denied on opportunity to put in their respective responses. In view of the bulky documentation filed by the Plaintiff herein, it is in the interests of justice that I allow the Defendants to file and serve their respective Replying Affidavits within fourteen (14) days from today i.e. by 1st October 2013, which I hereby do.
2. To move this matter forward, I hereby grant the Plaintiff corresponding leave to file and serve its Supplementary Affidavit, if need be and its written submissions within thirty (30) days from the date of service i.e. by 30th October 2013. The Defendants are hereby directed to file and serve their respective written submissions within seven (7) days from the date of service i.e by 7th November 2013.
3. Having given directions on the way the matter will proceed, it is important to note that all parties are in agreement that the advertisements which are on the subject matter of this suit have been running since June 2013. It is correct as counsel for the Plaintiff has argued that an action that is perceived as a wrong should not be continued and that the Plaintiff continues to suffer and has suffered loss of good will every time the ads are run. At this stage, the court is unable to look at the merits of the case because doing so, the court will essentially be giving a ruling in respect of Prayer No 4 of the Plaintiff's Notice of Motion application dated 9th September 2013 and filed on 10th September 2013.
4. However, this court has the discretion to grant interim injunctive orders based on the ground given in an application on an *ex-parte* basis. The court did not grant the said order as it wished to hear all the parties before it could make a decision. The court has noted that previously a party know as Procter & Gamble East Africa Ltd was struck out from the proceedings of this case on the ground that it was wound up. During the oral submissions, Mr Kipkorir advocate for the 3rd Defendant informed the court from the bar that it was not the advertising agency and that it would be futile to give a restraining order against it. Who then is the owner of the said advertisements? This is the question that the court should grapple with while considering whether or not the Plaintiff will suffer and/or continue to suffer prejudice by the advertisements being run.
5. The court also agrees with Mr Kipkorir that there is a danger of concluding this matter if orders are granted before allowing the Defendants to put in their responses. The court will therefore have

to be very careful when giving any orders. I am satisfied that, *prima facie*, there are sufficient grounds before me to show that the Plaintiff may suffer prejudice while parties are preparing for the hearing of the application herein.

6. In the circumstances foregoing, I hereby grant an interim injunction restraining the 1st and 2nd Defendants by themselves, their servants, agents, employees, or advertising agents from running, flighting or airing the Ariel One Wash Campaign advertisements in its current form at all media houses and all forms of print and electronic media pending the mention on 11th November 2013 when this matter will be mentioned with a view to confirming compliance and/or for further orders and/or directions by the court.

orders accordingly.

DATED and DELIVERED at NAIROBI this 20th day of September 2013

J. KAMAU

JUDGE