



DAVID IRUNGU.....PLAINTIFF

VERSUS

MIPET KENYA LIMITED.....1<sup>ST</sup> DEFENDANT

PETER KARIUKI MWAI.....2<sup>ND</sup> DEFENDANT

JAMES KINYUA MWAI.....3<sup>RD</sup> DEFENDANT

RULING

1. By a Notice of Motion dated 21<sup>st</sup> August 2012, the plaintiff seeks the following main order;

(c) *That pending the hearing and determination of this suit, this Honourable Court be pleased to freeze and/or prohibit any withdrawals, outward payments or transactions out of **Mipet Kenya Limited A/c No. [particulars withheld] Co-operative Bank Gikomba Branch** or any other bank account in the name of Mipet Kenya Limited.*

2. The Motion is supported by the plaintiff's affidavit sworn on 21<sup>st</sup> August 2012 which sets out the plaintiff's case. The plaintiff's main complaint is that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, who are together with him, shareholders and directors of the 1<sup>st</sup> defendant ("the Company") have opened a secret account at Co-operative Bank, Gikomba Branch in the name of the Company and have caused an amount of Kshs.5.4 Million payable to the Company and realised through the plaintiff's instrumentality to be paid therein and intend to defraud the plaintiff of his rightful share in the proceeds.

3. The plaintiff holds 450 shares out of 990 shares in the Company. The shares were transferred to him for valuable consideration by the 2<sup>nd</sup> defendant by a transfer dated 6<sup>th</sup> January 2012. At the time he joined the company, the company had no business and through his efforts, the Company secured a tender to supply satellite phones to the Office of the President worth Kshs. 5.4 million. The plaintiff avers that apart from procuring the goods on his own, he also ensured that the company's tax status was compliant and that he also purchased the tender security.

4. While payment was being sought, it emerged that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants were operating a company account to the exclusion of plaintiff at the Co-operative Bank Gikomba Branch. The details of this account had been supplied to the procuring entity as the account for payment but this information has not been disclosed to the plaintiff when he joined the company. As a result of the non-disclosure of the account, the plaintiff avers that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have breached the trust reposed in them as co-directors and shareholders and this non-disclosure amounts to an act of fraud.

5. On the basis of the facts outlined, counsel for the plaintiff, Mr Mbugua submitted that the plaintiff has established a prima facie case with good chance of success. Given the substantial investment made in the Company by the plaintiff, he stands to suffer loss which cannot be compensated by an award of damages.

6. Though the application was not opposed, I am satisfied that based on the uncontroverted facts that I have outlined, the plaintiff has met the conditions for the grant of an injunction set out in the case of **Giella v Cassman Brown[1973] EA 358.**

7. I therefore grant the following orders;

**(1) THAT an order of injunction be and is hereby issued restraining the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, whether jointly or severally or together with any other person from withdrawing, paying or transacting in any manner whatsoever with Account Number [particulars withheld] Co-operative Bank Gikomba**

***Branch in the name of MIPET KENYA LIMITED or any other account in the name of MIPET KENYA LIMITED pending the hearing and determination of the suit or until further orders of the court.***

***(2) THAT an order be and is hereby issued freezing and or prohibiting any withdrawals, outward payments or transactions out of Account No. [particulars withheld] Co-operative Bank Gikomba Branch or any bank account in the name of MIPET KENYA LIMITED pending the hearing and determination of the suit or until further orders of the court.***

***(3) THAT costs of the application dated 21<sup>st</sup> August 2012 shall be borne by the 2<sup>nd</sup> and 3<sup>rd</sup> defendants.***

**DATED and DELIVERED at NAIROBI this 29<sup>th</sup> August 2012**

**D.S. MAJANJA**

**JUDGE**

Mr G. N. Mbugua instructed by Mbugua Ng'ang'a and Company Advocates for the plaintiff.