



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION – MILIMANI
CIVIL CASE NO. 15 OF 2011

**KWA-MATINGI FARMERS CO-OPERATIVE SOCIETY
LTD.....PLAINTIFF**

VERSUS

**TROPICAL FARM MANAGEMENT (K)
LTD.....DEFENDANT**

RULING

By a Notice of Motion dated 21st January, 2011 and taken out under Order 40 Rules 1,2,3 and 4 of the Civil Procedure Rules; and Sections 1A, 1B, 3 and 3A of the Civil Procedure Act, the Plaintiffs/Applicants move the court for the following orders –

(1) ... (spent)

(2) ... (spent)

(3) ... (spent)

(4) That an injunction to restrain the Defendant by itself, its servants or agents from trespassing into and/or entering the Plaintiff's Land Reference No. 11210, interfering with the farm management and/or operations or removing coffee, farm machinery, inputs, chemicals and any other property on the Plaintiff's land from the Plaintiff's farm pending the hearing and determination of this suit.

(5) That the Respondent be restrained from operating account No. 0403065102 pending the hearing and determination of this suit.

(6) That the costs of this application be provided for.

The application is supported by the annexed affidavit of Joseph Mbatha Luusa, the Chairman of the Plaintiff Company, and is based, *inter alia*, on the grounds that –

- (a) The Plaintiff is the registered owner of LR No 11210 where it has established a large scale coffee estate.**
- (b) The Defendant has been the contracted estate manager of the said estate.**
- (c) The Defendant has unilaterally and with intent to ruin the Plaintiff farm operations since 19th October 2010 dismissed all the workers in the farm despite there being ripe coffee berries and other major farm work to be carried out at the onset of the rain season.**
- (d) The Respondent has been breaching the Coffee Act.**
- (e) The Defendant has willfully been breaching the Public Procurement and Disposal Act to the detriment of the applicant.**
- (f) The Respondent has incurred an overdraft on behalf of the Applicant without the latter's approval.**
- (g) The Defendant has from time to time failed, neglected and refused to carry out the Plaintiff's instructions leading to strained relationship hence the termination of the management contract.**
- (h) The Respondent has made and or caused to be made a stamp of the applicant without the Applicant's authority and is fraudulent using the same to the detriment of the applicant.**
- (i) The Respondent swore a false affidavit in HCCC No. 565 of 2010 showing that the Applicant owes it money while no money was owing per statements later obtained by the Applicant.**
- (j) The Defendant has threatened to carry away coffee held in the Plaintiff's stores despite the termination of the management contract and the expiry of the annual marketing contract.**
- (k) The Plaintiff has suffered and continues to suffer irreparable harm if the Defendant is not restrained as it will interfere with the financial base of the Plaintiff.**

When the application came for hearing on 10th February, 2010, Ms Muriungi appeared for the Applicant. However, the Respondents neither attended, nor were they represented. An affidavit of service on the court record shows that they were duly served on 26th January, 2011, and therefore they had 14 days within which to respond to the application. However, they did not do so either by filing a replying affidavit or grounds of opposition, and on the hearing date they opted not to attend court. Since they had been served a fortnight before the hearing date, they had been given sufficient time to attend court but

declined to do so. The application was therefore unopposed.

In the absence of the Respondent, Ms Muriungi for the Applicant took the court through the salient aspects of this matter. These are summarized on the grounds on which the application is based as set out on the face of the application, and are further amplified in the letter of termination of the agreement between the Applicants and the Respondents. In a nutshell, the Respondent is accused of, *inter alia*, unilaterally increasing management fees; irregular procurement and payment of goods and services; levying charges to the grower that are not supported by the agreement; charging interest on the account on which no debt is outstanding; suspending work at the farm without consultation; incurring a debt at the Equatorial Commercial Bank Ltd without the knowledge, approval and/or authority from the Applicant; paying off a debt to the Co-operative Bank of Kenya knowing that the same had been waived and/or in the advanced stages of a waiver; borrowing at Equatorial Bank at a high rate of interest of 15% to pay a written off debt whose interest was 5%; and fraudulently giving false and inaccurate accounts to the Applicants client contrary to the express provisions of the agreement.

In spite of these serious allegations levelled against the Respondent, the Respondent did not heed the complaint and this led to strained relations between the parties and culminated in the termination of the management contract between the parties. The Respondent would have been expected to react to the accusations but instead it opted to say nothing. Having failed to respond despite having been confronted with the accusations in the letter of termination of the Management Agreement, I find that the application is unopposed and that the applicant has made out a strong *prima facie* case against the Respondent and that it is entitled to the orders as prayed.

I accordingly order that –

(i) An injunction be and is hereby issued restraining the Defendant by itself, its servants or agents from trespassing into and or entering the Plaintiff's LR No. 11210, interfering with the farm management and or operations or removing coffee, farm machinery, inputs, chemicals and any other property on the Plaintiff's land from the Plaintiff's farm pending the hearing and determination of the suit.

(ii) That the Respondent be and is hereby restrained from operating account No. 0403065102 pending the hearing and determination of this suit.

(iii) That the Respondent shall pay the costs of this application.

Dated and Delivered at Nairobi this 14th day of February, 2011.

L NJAGI

JUDGE