



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO. 236 OF 2009

JOSHVIR TRADERS & AGENCIES LTD.....PLAINTIFF

VERSUS

GEOFFREY CHEGE KIRUNDI.....1ST DEFENDANT
LUCY WAMAITHA CHEGE.....2ND DEFENDANT
EVERTON COAL ENTERPRISES LIMITED....3RD DEFENDANT

R U L I N G

1. The plaintiff/applicant seeks orders under Order VI Rule 8(2), (17), (20) & (23) of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act, for the defendants to be ordered to give particulars and produce documents for inspection as per the request for particulars and notice to produce dated 29th May, 2010 served on the defendants on 31st May, 2010. In default of compliance within 14 days, the plaintiff seeks order that the defence shall stand dismissed.
2. The plaintiff's counsel has sworn an affidavit deponing that the plaintiff requires the requested particulars for the purposes of shedding light on all the matters in controversy. The court was urged to issue the orders sought so that discovery may be finalized.
3. The 1st and 2nd defendants did not object to being ordered to provide the necessary particulars. However, the 1st and 2nd defendants object to being ordered to produce the documents. They allege that some of the documents required to be produced do not form part of the transaction subject of the suit.
4. The 3rd defendant indicated it had only been served with a request for particulars which it was willing to comply with. The 3rd defendant denied having been served with any notice to produce.
5. Having considered the application, I find that neither the 1st and 2nd defendants nor the 3rd defendant object to the request for particulars served upon them by the plaintiff. In the circumstances, I do order that the defendants shall file an answer to the plaintiff's request for particulars and supply the required particulars within 14 days from today.
6. As regards the notice to produce, the same was only addressed to the 1st and 2nd

defendants. Having considered the objection of the 1st and 2nd defendants, I do concur that the documents listed as Nos.(1), (2) and (3) on the plaintiff's notice to produce are public documents, copies of which the plaintiff can easily obtain from the appropriate court registry. As regards the documents listed as Nos. (4), (5), (6), (7), (8) and (9), they are all documents which are relevant to the issues before the court. The plaintiff and his advocate are entitled to inspect the original documents. The fact that copies may have been availed to them is not sufficient to negate that right.

7. I do therefore order that the 1st and 2nd defendants shall avail documents listed as Nos.(4), (5), (6), (7), (8) & (9) to the plaintiff for inspection within 14 days from the date hereof.

8. In default of the defendants complying with these orders, the plaintiff shall be at liberty to apply under Order X Rule 20 of the civil Procedure Rules for the defences to be struck off.

Orders accordingly.

Dated and delivered this 11th day of February, 2011

H. M. OKWENGU

JUDGE

In the presence of: -

Kamunde for the plaintiff

Advocate for the defendants absent

Kosgei - Court clerk