



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**CIVL SUIT NO. 293 OF 2011**

1. DAVID MUSAU MUTETI  
2. WINNIE NYAMBURA KIMANI  
3. NDUBUBU THUO..... PLAINTIFFS

V E R S U S

1. REDSKY LIMITED  
2. SAFARICOM LIMITED..... DEFENDANTS

**RULING/ORDER**

Chamber summons dated 07/07/2011 is fixed for hearing on 17<sup>th</sup> October, 2011. The Defendants may within 14 days of today file and serve papers in response to the application.

In their turn the Plaintiffs may within 7 days of service file supplementary affidavit in answer to any new issues raised in the replying affidavits.

Regarding interim injunction, I note as follows:-

1. There is not pleaded in the plaint any clear intellectual proprietary interest in **Sakata Ball Soccer Tournament, The Dream Lives On, Jonathan Niva Cup** or some such other slogan. No registered trade mark or some other intellectual property has been pleaded.
2. It is common ground that the soccer tournament in question has been running from the beginning of the year, and that the national final is scheduled to be played on Saturday 23<sup>rd</sup> July, 2011. The Plaintiffs have thus come to court only a few days to that final.
3. The explanation for the seven-month delay in coming to court, as given by the Plaintiffs' learned counsel, is that the Plaintiffs had "to observe the format of the tournament, the concept behind it, the slogans used and the various facets of the tournament" before coming to court.

Observe violation of your rights for seven months and come to court only a few days before conclusion of the tournament?!

I am not persuaded that a credible reason has been given for the long delay in coming to court. A litigant who seeks equitable relief, and interim injunction is one such, must demonstrate first and foremost that he has come to court as soon as he possibly could. A litigant who sits on his rights is not deserving of any discretion of the court.

There is also the issue of the costs involved. It cannot be gainsaid that it costs money, probably lots of money, to organise a national soccer tournament. To stop the tournament when only the final remains to be played must necessarily involve the Defendants in considerable costs. The Plaintiffs have not offered any proper security for the interim order sought. In the circumstances, I hold that it would not be in the interests of justice to grant any interim injunction, and the same is refused.

**Signed**

**H.P.G. WAWERU**  
**JUDGE**

**19/07/2011**

**COURT:** The application to be heard by any other judge of the Civil Division.

**H.P.G. WAWERU**  
**JUDGE**