



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 464 OF 2011

VISTA HOLDINGS INTERNATIONAL LIMITEDPLAINTIFF

- VERSUS -

SPAIN IMAGE (K) LIMITED.....DEFENDANT

RULING

On 18th October 2011 the application dated 17th October 2011 was argued ex-parte by counsel for the Applicant Mr. Osundwa, and on the basis of his submissions, merits of the application and the information given to the court orders, interim orders were granted and the matter scheduled for inter-partes hearing today the 28th October 2011.

On 27th October 2011 counsel for the Respondent was Mr. Taib was heard on an application by way of Notice of Motion dated 26th October 2011 and on the basis of the submissions and on the merits of the application this court granted orders. Apparently these orders have not been served upon the Plaintiff /Applicant.

This morning the Plaintiff has filed another urgent application praying that Mr. Taib the counsel for the Defendant be barred from representing the Defendant and that the orders given on 18th October be extended until the inter-partes hearing of the Applicant dated 17th October 2011.

Since all the applications have come to me I have noted that parties come to court and disclose only issues which they believe would give them the orders they seek. The Applicant on 18th October 2011 did not disclose to the court that the parties are closely related in business and that between them there is a business contract or agreement, or that the Plaintiff has an interest in the business of Defendant. The submissions were made as if the parties are total strangers with one infringing the rights of the other and that the infringement was just a sudden discovery and hence the urgency of the matter. This court granted the orders requested.

Yesterday, Mr. Taib moved the court through the application I have stated above. The main thrust of which there is an agreement between the parties which requires that all disputes first go through the process of arbitration. This court then granted the orders on merit of the application. What Mr. Taib did not tell the court is that he is also closely associated with one of the parties. This is now the subject matter of the latest application.

As long as parties to suit will not disclose all the information surrounding the subject matter, this court will listen to all applications and give orders as appropriate.

What however is certain in this suit is that the protagonists are relatives in business. This court will not help them fight their wars. But when they bring an application for hearing the court will hear it and make orders as appropriate.

I granted orders yesterday, among them staying the orders granted on 18th October 2011 until 8th November 2011. I see no reason to vary it. It appears the said order has not been served upon the Plaintiff. Service should be done immediately so that the Plaintiff understands the position. Parties have agreed by consent to have the Plaintiff's application dated today 28th October 2011, and the Defendant's application dated 26th October 2011 heard together on 8th November 2011, with the former taking priority.

Accordingly these applications will be heard on 8th November 2011. The only orders in place are those granted by this court on 27th October 2011.

It is so ordered.

**DATED, READ AND DELIVERED AT NAIROBI
THIS 28TH DAY OF OCTOBER 2011.**

**E. K. O. OGOLA
JUDGE**

PRESENT:

Mr. Osundwa for the Plaintiff

Mr. Taib for the Respondent

Irene - Court Clerk