

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

HCC NO. 53 OF 2011

P.N.T.C. WORLDWIDE PVY

LTD.....PLAINTIFF

VERSUS

SUN PALM MANAGEMENT LIMITED & SUM PALM
LIMITED.....DEFENDANTS

R U L I N G

1. There are two applications pending before me. One is the defendants' notice of motion dated 12th August, 2011 in which the defendants seek orders of injunction restraining the plaintiff from entering or remaining in occupation of Plot No. Kilifi/Jimba/669, and Block No. Kilifi/Jimba/408, or in any way trespassing upon the said premises pending further orders of the court. The defendants also seek orders to strike out the plaintiff's suit and the defence to the counterclaim. In the alternative, the defendants seek orders to vary or discharge the order made on 20th July, 2011.
2. The second application is the application dated 5th August, 2011 in which the plaintiff seeks to have a warrant of arrest and or summons issued to bring into this court Eleonora Cozzi the director of the defendants to show cause why she should not be committed to civil jail or why the defendants properties situated on the tenancy premises on Plot No. Kilifi/Jimba/408 should not be attached and sold to compensate the plaintiff for violating and breaching the court orders issued on 20th July, 2011 with regard to the plaintiff's occupation and operation of leased premises situated thereon.
3. On the 7th November, 2011, I gave directions that the two applications be heard inter partes on 22nd November, 2011. On 22nd November, 2011 the advocate for the plaintiff urged the court to suspend the proceedings with regard to the defendants motion dated 12th August, 2011 in view of the contempt application which the plaintiff had filed against the defendants directors. The plaintiff's counsel argued that the defendants ought not to be given a hearing.
4. That application was strenuously opposed by the defence counsel, who argued that the application to suspend the proceedings was nothing other than an attempt to derail the hearing of the defendants' motion dated 12th August, 2011. Counsel argued that the application before the court was not one for contempt but an application under Order 40 of the Civil Procedure Rules in respect of which breach or disobedience has to be established before summons or warrants can be issued. The court was urged to go by the orders it had earlier made for the two applications to be heard together.
5. It is evident to me that the plaintiff is not anxious to have this suit heard or disposed of. The plaintiff is apparently comfortable with the interlocutory orders which were issued in its favour on 20th July, 2011. The plaintiff is now pursuing the application for contempt of those orders. I made an order on 7th November, 2011 which was very clear. That order was for the plaintiff's application dated 5th August, 2011 and the defendants' application dated 12th August, 2011 to be heard together. This was because in my view the two applications are interrelated. They appear to me to be two sides of the same coin. That is why I found it expedient that the two applications be heard together. I see no reason why this position should change. The plaintiff has not convinced me as to why the proceedings should be suspended. That

is a conclusion that can only be arrived at after the plaintiff's application is heard and determined.

6. I therefore reject the oral application made by the plaintiff's counsel and order that the two applications be heard together. Parties shall take an urgent date for the hearing of the two applications.

Dated, signed and delivered this 6th day of December, 2011.

H. M. OKWENGU
JUDGE

In the presence of:
Kilonzo for the Plaintiff
Asige for the Defendants
Kiponda Court Clerk