



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Case 8 of 2010

DR. BEATRICE KAMONYA PLAINTIFF
DR. CHARLES JAKAIT PLAINTIFF

--V E R S U S--

DR. ZHAO XIAO HU..... DEFENDANT

RULING

This is an application by Chamber Summons stated to be brought under the provisions of Section 3A of the Civil Procedure Act and Order XXXIX Rules 1, 2, 3 and 9 of the Civil Procedure Rules and all enabling provisions of the law. It seeks orders that:-

- (a) *The defendant her servants and/or agents be and is (sic) hereby restrained by means of a temporary injunction from dealing with the operation of Beijing Kenya Company Limited and in particular Imani Hospital pending the hearing and determination of the application and the main suit.*
- (b) *Pending the hearing and determination of this application and the main suit the Account namely IMANI HOSPITAL A/C/ NO. 1714200006 with FINA BANK be and is hereby opened forthwith and the 1st Plaintiff to continue operating as before.*

That application is based on the grounds that the second plaintiff and the defendant are directors of Beijing Kenya Co. Ltd and the defendant has since sold 70% of her shares in the said company to the first plaintiff for a total consideration of \$122,000/= out of which the first plaintiff has paid \$ 30,000.00 and the balance to be completed by 30th March, 2012 but that the defendant has interfered with the operation of the company and has blocked the operations of the bank Account which has caused the plaintiffs to suffer loss and damage. The plaintiff/ applicants have sworn affidavits in support of the application

The Defendant swore the Replying Affidavit denying that the applicants had any *locus standi* to bring the suit and the application as firstly the 1st plaintiff was not a member of the company known as

Beijing Kenya Company Limited and secondly the 2nd plaintiff could not sue under the Memorandum of understanding signed between the 1st plaintiff and the defendant and in any case no case may be founded on a memorandum of understanding.

The issues before me are clearly whether the plaintiffs as they are may bring the suit as brought and whether they are entitled to the orders sought. It was admitted by all parties herein that the dispute arises from the operations of the company known as Beijing Kenya Limited. That is a legal person and it is that which ought to have brought the proceedings herein as the same touch on the running of a business known as **IMANI HOSPITAL** whose sole proprietor is Beijing Kenya Ltd. In any event such suit would be premature as per the Articles of Association of the said company require that any dispute arising would be resolved by reference to Arbitration. Further the first plaintiff not being a member of the company has clearly no *locus standi* to sue on matters touching on the company. The second plaintiff on his part has no *locus standi* whatsoever to sue on an agreement between the first plaintiff and the defendant. Yet again the prayers in the plaint are clearly not the prayers sought in the chamber summons and they cannot issue. The first plaintiff cannot succeed in wishing to operate an account of a company where she is neither a member director or nominee. Further she has on her part not complied with her part of the bargain of the agreement between herself and the defendant. The defendant did not purport to act for the company in entering into that agreement with the first plaintiff and until there was transfer of the defendant's shares to the first plaintiff the affairs of the company can only be transacted by the 2nd plaintiff and the defendant in the manner agreed between them as per the articles of Association of the company.

The plaintiffs do not make out a case for the grant of the orders sought and their application fails and it is dismissed with costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT ELDORET THIS 28TH DAY OF JULY, 2010.

P.M. MWILU

JUDGE.

In the presence of

Kiboi holding brief for Nyambegera Advocate for plaintiff / Applicant

Kasavuli holding brief for Kigamwa Advocate for Defendant Respondent.

Andrew Omwenga -Court Clerk

P.M. MWILU.

JUDGE.