



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 422 of 2007

JOSEPH NJOGU NJUGUNA

JANE NYAMBURA NJOGU.....PLAINTIFFS

VERSUS

TETRA PAK LIMITED.....DEFENDANT

RULING

Notice of Motion dated 18/11/2009 Order XLIV Rule 1 and Order L rule 1 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act, Cap. 21, Laws of Kenya and all other enabling provisions of the law for orders that:-

1. The Ruling and Order by Honourable Lady Justice Khaminwa dated and delivered on 9th October be and is hereby reviewed and/or varied;
2. The hearing and proceedings in this suit namely HCC No. 422 of 2007 Milimani be and are hereby stayed pending the hearing and determination of HCCC No. 1694 of 2001 Milimani – Joseph Njuguna & Another vs. Aberdare Creameries and Tetra Pak and HCC No. 1661 of 2002 Nairobi.

The application is supported by the affidavit of Muigai Gachau and is based on the following grounds:-

- (a) There is an error apparent on the face of the ruling and order;
- (b) The ruling upheld ground 2 of the defendant/applicant's Preliminary Objection dated 22nd May 2009 which sought to stay the hearing of the instant suit pending the hearing and determination of HCCC No. 1694 of 2001, Milimani and HCCC No. 1661 of 2002, Nairobi;
- (c) The ruling then went on to stay the hearing of HCCC No. 1694 of 2001, Milimani and HCCC No. 1661 of 2002, Nairobi pending the hearing and determination of this suit;
- (d) There is apparent internal inconsistencies and contradiction in the said ruling;
- (e) It is in the interest of justice and fairness that the ruling and order be reviewed to eliminate the inconsistencies and contradictions.

I have considered the application and I am convinced there is apparent on the face of the rulings. The Ruling upheld ground No. 2 of Applicant's Preliminary Objection dated 22/5/2009 which sought to stay the hearing of the instant suit pending the hearing and determination of HCC 1694/2001 Milimani and HCCC 1661 of 2002 pending the ruling then went on to stay the hearing of 1694/2001.

I have perused the application and considered prayers made. I am convinced that justice will be served by allowing the application and granting orders sought with no order as to costs.

Dated and delivered at Nairobi this 15th day of October 2010.

J. N. KHAMINWA

JUDGE