



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 620 of 2008

**GEMCO GENERAL MERCHANTS & OTHERS ..... PLAINTIFFS**

**VERSUS**

**NRY KINYUA & 3 OTHERS .....DEFENDANTS**

**R U L I N G**

Application dated 21/10/08 by Chamber Summons brought under

**Order XXXIX Rule 1, 2, 3 and 9 and Section 3A, Civil Procedure Act, Cap.21.**

Orders sought are:

- 1. To restrain by injunction the defendants (who are registered officials of Kenya Coffee Producers Association (K.C.P.T.A) from levying or continuing to levy the sum of Kshs.210,000/= penalty from plaintiffs for failing to meet the target of purchasing 600 bags of coffee annually denying them the plaintiffs to obtain coffee samples to aid them in marketing the coffee to prospective clients and purporting to levy further penalties without prior consent and consultation with plaintiffs pending hearing of this suit.**
- 2. Restraining the defendants from cashing/presenting in plaintiffs' bank the cheques of Kshs.210,000/= pending hearing and determination of this suit.**
- 3. That the defendants be ordered to allow the plaintiffs to trade at the Nairobi Coffee Exchange pending hearing and determination of this suit.**

The grounds upon which the application is based are stated in the

application and supporting affidavit.

In replying affidavit the defendants state that there has been non-disclosure of material facts by the applicants. They also state that there is established a dispute resolution mechanism where the matter should be referred to the Coffee Board who in turn would refer the matter to arbitration.

Furthermore the defendants say they have at all times acted within the relevant provisions of **Coffee Act 2001**. It is denied that the defendants have acted outside its Constitution. The defendants point out that the applicants had already issued cheques in payment of penalty before filing this suit.

The applicant in further affidavit, allege that the defendants have usurped the powers of the Minister and Coffee Board and have shown bias and that Trade rules have not been adopted at the Annual General Meeting and also that the Trade Rules do not empower the defendants to impose a penalty of USD3000. The Constitution has not been amended to permit levy or impose penalties.

Upon considering the material land before the court, it is clear that the application seeks interlocutory orders of injunction pending the hearing of this suit. The dispute is between members of a Society (plaintiffs) and their Society (defendants). The issues raised are in relation with the defendants' management of the society by defendants particularly in raising penalties and barring the plaintiffs from trading in Nairobi Coffee Exchange despite the fact that the plaintiffs are licenced.

It is alleged that the defendants are acting ultra vires their powers and contrary to the provisions of the Constitution of the society. However, it is clear the issue of raising penalties was discussed at a meeting and some of the plaintiffs have willingly handed over cheques to the defendants to cover the alleged penalties. The court does not therefore find that the prayer IV can be granted at interlocutory level.

On the whole, it is clear that the defendants are acting under the powers granted by the regulations and the Constitution of the society. The plaintiffs do not show that there is justification for orders sought. According to the evidence contained in the annexures to supporting affidavit there are several other members of society and if the injunctions were to be granted, it would bring the activities of the society to a halt causing damage to other members who are not involved in this suit.

Considering principles set out in granting interlocutory injunction, the court is not satisfied that applicants have demonstrated a prima facie case. Their claims can be compensated in damages. They state that the society is enriching itself and therefore damages can be adequate compensation. On the balance of convenience, it is the defendants who are running the operations and they should continue doing so to avoid disruption and disturbance of the operations.

In addition, it appears to court that there is a process of resolving disputes by arbitration and that has not been invoked. I therefore do not find any merit in the application and the same is dismissed with costs.

**DATED** and **DELIVERED** at Nairobi this 26<sup>th</sup> day of January 2009.

**JOYCE N. KHAMINWA**

**JUDGE**