



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

Civil Suit 30 of 2009

QUALITY GROUP LIMITED.....PLAINTIFF

VERSUS

GENERAL MOTORS EAST AFRICA LIMITEDDEFENDANT

R U L I N G

The Plaintiff, Quality Group Limited and the Defendant, General Motors East African Limited entered into a Dealer and Sales Services Agreement in 2005, 17th August in which the Plaintiff was to be the Sole Distributor of Isuzu type trucks and motor vehicles for Tanzania. The Agreement was for a period of five years with option to review the same for a further five years. Either party had a right to terminate the Agreement. The Plaintiff contends that he Defendant purported to unilaterally and prematurely terminate the Agreement giving the Plaintiff less than one day's notice.

The Plaintiff by a Chamber Summons application dated 19th January, 2009 now seeks the following orders:

1. THAT pending the inter partes hearing, this honrouable court be pleased to grant an injunction restrain gin the defendant form breaching the Dealership sales and Service Agreement dated 17th August 2005 (hereinafter "the agreement") by termination, discontinuation, of supply of items ordered by Warranty support to the Plaintiff, or otherwise engaging and alternative dealer or directly selling ISUZU motor vehicles, parts and accessories in the Republic of Tanzania.
2. THAT pending the inter partes hearing, this honourable court be pleased to grant an interlocutory mandatory injunction compelling the defendant by itself, its servants or agents or othwise howsoever to honour the orders received from the plaintiff for ISUZU motor vehicle, parts and accessories, Warranty support and services and to comply fully and completely with the agreement aforesaid.
3. THAT pending the hearing and determination of the suit, this honourable court be pleased to grant an injunction restraining the defendant from breaching the Dealership Sales and Service Agreement dated 17th August, 2005 (hereinafter "the agreement") by termination, or discontinuation, of supply of items ordered and Warranty support to the Plaintiff, or otherwise engaging and alternative deflower or directly selling ISUZU motor vehicles, parts and accessories in the Republic of Tanzania.
4. THAT pending the hearing and determination of the suit, this Honorable court be pleased to grant an interlocutory mandatory injunction compelling the defendant by itself, its servants or agents or otherwise however to honour the orders received form the Plaintiff for ISUZU motor vehicle, parts and accessories, Warranty support and services and to comply fully and completely with the agreement aforesaid.

5. THAT the Plaintiffs be at liberty to apply for such further or other orders and/or directions as this Honourable Court may deem fit and just to grant.

Orders (2) and (3) are moot.

The application is supported by an affidavit sworn by RAKESH CHANDULAL MEHTA, the Vice President of the Plaintiff. The affidavit annexes several documents in support of the application.

Upon being served with the temporary injunction order granted to the Plaintiff herein, ex parte and in the first instance in terms of order (2) of the application as set out hereinabove, the Defendant filed a Notice of Motion application dated 26th January, 2009 in the application, the Defendant sought orders

2. THAT this Honourable Court be pleased to stay, pending the inter-partes hearing of this application, Order No. 2 of the ex parte orders made herein on 19th January 2009, namely the order directing that “pending the inter-partes hearing, an injunction be and is hereby granted restraining the Defendant from breaching the Dealership Sales and Service Agreement dated 17th August 2005 (hereinafter “the agreement”) by termination, discontinuation, of supply of items ordered and Warranty support to the Plaintiff, or otherwise engaging and alternative dealer or directly selling Isuzu Motor vehicles, parts and accessories in the Republic of Tanzania.

3. THAT on the inter partes hearing of this application this Honourable Court be pleased to set aside or discharge the ex parte orders granted to the Plaintiff on 19th January 2009 in particular, Order No. 2 namely the order directing that “pending the inter-partes hearing, an injunction be and is hereby granted restraining the Defendant from breaching the Dealership Sales and Service Agreement dated 17th August, 2005 (hereinafter “the agreement”) by termination, discontinuation, or supply of items ordered and Warranty support to the Plaintiff, or otherwise engaging and alternative dealer or directly selling Isuzu Motor vehicles, parts and accessories in the Republic of Tanzania”.

The application was supported by an affidavit sworn by Carolyn Kerubo Matara, the General Manager of the Defendant in charge of Legal, Risk Management and Public Policy dated the same day. The affidavit also annexes several documents in its support.

The Plaintiff has filed grounds of opposition to the Defendants Notice of Motion application dated 27th January, 2009. The grounds raised are four as follows: -

1. Despite express service of order the Applicant has blatantly refused to comply with the order issued by this Honourable Court on the day of 19th January, 2009.
2. The Application does not show any fact concealed, distorted and or misrepresented by the Plaintiff.
3. The Applicant has admitted service of the pleadings, the order and the notice of Panel Consequence but faults the discretion of the court to issue such orders.
4. The Application is misconceived lacks merits and does not lie.

The Defendant has filed a replying affidavit to the Plaintiff’s Chamber summons application. The Replying Affidavit is sworn by Carolyn Kerubo Matara and is dated 27th January, 2009. There are also several documents annexed to it.

On 29th January, 2009 the Plaintiff through Mr. Shangaram Venkatraman Hedgekotte, its Director of the Quality and Commercial services Department filed an affidavit in response to the Defendant’s Replying affidavit to the Plaintiff’s Chamber Summons application and to the Defendant’s Chamber Summons application and supporting affidavit.

I have considered the two applications and the affidavit file in regard thereto.

Each party filed written submissions which I have also considered.

Dated at Nairobi this 20th day of February, 2009.

LESIT, J.

JUDGE

Read, delivered and signed in presence of:

for Applicant

.....for Attorney General

LESIT, J.

JUDGE