



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 331 of 2008**

**JUJA ROAD FANCY STORE LTD. ....PLAINTIFF**

**VERSUS**

**CFC FINANCIAL SERVICES LTD. ....DEFENDANT**

**R U L I N G**

Notice of motion dated 10.7.08 under Order XXXIX, Rules 2, 2A. Orders sought prayer 3 – mandatory injunction do issue compelling the defendant to reverse and cancel the entry reflecting the purchase of 10,000 shares of ICDC Investments Co. Ltd. by the defendant on or about November 2006 over CDS Account No.381543 pending the hearing and determination of this suit.

The application is grounded that the defendants are operating plaintiff's CDS Account No.381543 without mandate and contrary to Statutory regulations and have in fact purported to purchase shares worth Kshs.4,379,124.00 in breach of terms of the contract which purchase though disputed, the defendant has refused to cancel.

Also that there is breach of fiduciary duties owed to the plaintiff and that the defendant continues to act uncontractually and illegally contrary to the statutory obligations and terms of professional stockbroker. The supporting affidavit shows that the defendant was not authorized to transact the said transaction. The contractual relationship expressly and/or impliedly required that the defendant would deal with the account professionally and with the authority of the plaintiff. Furthermore, operate the account in a manner beneficial to the plaintiff and adhere to the Capital Markets Authority Licensing and general regulations and to further the plaintiff's investment.

The defendant has filed grounds of opposition substantially denying the right to obtain mandatory injunction at this stage of interlocutory application.

Counsel for the applicant has relied on two authorities. In the HCC No.2014 of 1987 – Njonjo Itotia vs. Family Finance Building Society which deals with sale of a chattel (motor vehicle) and claim for damages. The other decision is the ruling in the case of HCC No.2225/1992 – Belle Maison Ltd. vs. Yaya Towers Ltd. in which there was an application for mandatory injunction at interlocutory stage. Bosire, J. as he then was relying on the authority of Despine Pontikos and Adonia vs. Mutkance 1970 E.A. 429 and came to a conclusion that where the interest of justice demands the court will invoke its inherent powers to grant the orders.

In this case where the defendants insists on using its fiduciary duty against the applicant's account contrary to express or implied agreements and all to the detriment of the applicant and contrary to the statutory regulations, it is my view that the applicants are entitled to protection.

I therefore allow application and grant orders as prayed under prayer 3 and 4 of the application with costs to the applicants.

Orders accordingly.

DATED and DELIVERED this 6<sup>th</sup> day of February 2009.

**JOYCE N. KHAMINWA**

**JUDGE**