



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 598 of 2008**

**EDWARD SAYIANKA KARASHA**

**(Suing on his own behalf and on behalf of the consumers of the  
products manufactured by the Defendant) .....PLAINTIFF**

**V E R S U S**

**EAST AFRICAN BREWERIES LIMITED .....DEFENDANT**

**R U L I N G**

The Plaintiff has purported to file this suit on his own behalf and on behalf of “**the consumers of the products manufactured by the defendant company**”. The cause of action is pleaded at paragraphs 7, 8, and 12 of the plaint dated 15<sup>th</sup> December 2008 as follows:-

“7. In or about February 2006, during the hours of daylight, the Plaintiff purchased an alcoholic beverage, namely **Pilsner Lager**, in a bar in the Langata area of Nairobi District, which said beverage is one of the popular brands manufactured by the Defendant .....

8. As the Plaintiff was about to have the bottle containing the said beverage opened for his consumption, he noticed a packet of male contraceptives, namely **Trust** condoms, within the said bottle and therefore refrained from having it opened, and kept possession of the bottle.

9. The Plaintiff avers that had it not been in broad daylight, and had he not been extra-vigilant and/or lucky, he would not have been able to detect that the bottle contained any extraneous matter and would undoubtedly have consumed the same despite its noxious, deleterious and highly offensive content.

12. The Plaintiff avers that as a direct result of the Defendant’s aforesaid negligence (pleaded and particularized in paragraph 11) he has suffered injury.” (Particulars of injury are given.)

The Plaintiff has further pleaded at paragraphs 13 and 14 of the plaint as follows:-

“13. The Plaintiff avers that the fact that a bottle containing such offensive and deleterious matter could possibly find its way to the ultimate consumer is clear indication that the Defendant cannot guarantee the safety of its products to its consumers and speaks volumes of the weakness and porosity of the Defendant’s quality control mechanisms.

14. The Plaintiff avers that the negligent manner in which the Defendant manufactures, packages, distributes and sells its products poses a risk to the health and life of the Plaintiff and other consumers of

the Defendant's products and the Defendant shall continue to so manufacture, package, distribute and sell its said products unless otherwise compelled by this honourable court."

The main reliefs sought in the plaint are as follows:-

"a) A declaration that the fact that a bottle containing such offensive and deleterious matter could possible find its way to the ultimate consumer raises a presumption of negligence on the part of the Defendant and is clear indication of the porosity of the Defendant's quality control mechanism and suggests that the Defendant cannot guarantee the safety of its products to its consumers.

b) A declaration that the packaging of the beverages in opaque and/or translucent bottles and cans denies the Plaintiff and other consumers of the Defendant's products an opportunity to adequately inspect and examine the same before consumption, and thereby posing a risk to their health and life.

c) An order....compelling the Defendant to package its products in **transparent** and **clear** bottles and cans.

d) An order compelling the Defendant to publish **conspicuously** in all leading print and electronic media and on each of its products a **warning** advising the consumers of its products to keenly inspect and examine the products before consumption."

No damages are sought.

The Plaintiff has sought by chamber summons dated 16<sup>th</sup> December, 2008 directions under **Order 1, rule 8(2)** of the **Civil Procedure Rules** (the Rules) for the giving of notice of the institution of the suit to all persons having the same interest in the suit. No papers were filed by the Defendant in response to the application. But at the hearing thereof, its learned counsel submitted that there is no evidence, *prima facie*, of any numerous persons interested in the suit, and that therefore the directions sought should not be given.

Before the court can give the directions required by sub-rule (2) of rule 8 aforesaid, it must be satisfied that the suit is genuinely representative. Under sub-rule (1) of that rule, where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued, or may be authorized by the court to defend in such suit, on behalf of or for the benefit of all persons so interested.

In the present case the cause of action arose in connection with one single bottle of beer, which was neither opened nor consumed, alleged to have contained some foreign matter. The Plaintiff has not pleaded that he was in company with other people when the cause of action arose. He has not sought damages. No list of any other persons who may be interested in the suit has been given or alluded to. Why, in these circumstances, should the entire beer-drinking population of the country, and possibly beyond, be dragged into the suit?

I am not satisfied at all that this is a genuinely representative suit. It appears to me that the attempt to make it so is designed and intended for other purposes outside the immediate tortious dispute between the Plaintiff and the Defendant. I therefore decline to issue any directions under Order 1, rule 8(2) of the Rules. The application by chamber summons dated 16<sup>th</sup> December, 2008 is dismissed with no order as to costs. That will be the order of the court.

**DATED AT NAIROBI THIS 17<sup>TH</sup> DAY OF JUNE, 2009**

**H. P. G. WAWERU**

**J U D G E**

**DELIVERED THIS 19<sup>TH</sup> DAY OF JUNE, 2009**