



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Suit 421 of 2009**

**PARAMOUNT UNIVERSAL BANK.....APPLICANT**

**VERSUS**

**ALI AHMED ABOUD MAALIM.....1<sup>ST</sup> RESPONDENT**

**KENYA REVENUE AUTHORITY.....2<sup>ND</sup> RESPONDENT**

**FINA BANK LIMITED.....3<sup>RD</sup> RESPONDENT**

**BLOWPLAST LIMITED.....4<sup>TH</sup> RESPONDENT**

**RULING**

On 12<sup>th</sup> June 2009, the applicant filed an originating summons under Section 58 of the Civil Procedure Act and Order XXXIII Rules 1 & 2 of the Civil Procedure Rules seeking the determination by the court to whom the sum of Kshs.7,785,008/= should be paid to in light of the competing interest between the 1<sup>st</sup> and 4<sup>th</sup> respondents. The defendants were duly served with the originating summons. They all filed responses to the application. Before the application could be heard on its merits, Mr. Sehmi the advocate for the 4<sup>th</sup> respondent sought directions from the court in regard to how the hearing of the originating summons shall proceed. He was of the view that in light of the competing interest between the 1<sup>st</sup> and 4<sup>th</sup> respondents, and further in light of the mediation proceedings that are ongoing between the applicant and the 3<sup>rd</sup> respondent under the auspices of the Kenya Bankers Association, it would be imprudent for the court to proceed with the hearing of the interpleader proceedings by way of submissions instead of allowing parties to adduce viva voce evidence in support of their respective opposing positions. Mr. Sehmi submitted that it would be impossible for this court to reach a just determination of the matters in dispute in view of the conflicting evidence adduced by way of affidavits. He was of the firm view that the court should invoke its jurisdiction and direct that the originating summons herein be disposed of upon full hearing. Mr. Sehmi's position was supported by Mr. Ngaira, the advocate of the 1<sup>st</sup> respondent and Mr. Mutua the advocate of the 3<sup>rd</sup> respondent. Mr. Ontweka, advocate for the 2<sup>nd</sup> respondent informed the court that the 2<sup>nd</sup> respondent did not have an interest in the proceedings and therefore should be excused from the same. The court allowed the 2<sup>nd</sup> respondent's application to be excused from the proceedings.

Mr. Ngatia for the applicant opposed the application. He was of the view that the issues for determination relating to who was entitled to the dispute between the 1<sup>st</sup> and 4<sup>th</sup> respondents was an issue that could be referred to trial. He was however opposed to the applicant being dragged to the proceedings between the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents regarding the determination to whom the sum in dispute in these proceedings belongs. He argued that the court should give directions in regard to the fate of the interpleader proceedings, give an order of costs in favour of the applicant, and thereafter allow the applicant to exit the proceedings. He urged the court to disallow the 4<sup>th</sup> respondent's application and direct that the interpleader proceedings be heard by way of submissions as earlier scheduled.

I have carefully considered the issues raised by Mr. Sehmi in regard to the suitability of disposing the

matters in dispute in this originating summons by submissions. The present interpleader proceedings have been brought by the applicant for the court to make a decision in regard to who, between the 1<sup>st</sup> and 4<sup>th</sup> respondents should be paid the contested amount. The applicant has no interest in the amount in question save for its costs. The only aspect of the case that may keep the applicant in the proceedings is if it is established that there was collusion between the applicant and some of the claimants. From my perusal of the affidavit sworn by the deponent in support of the applicant's application, it was clear to the court that the applicant is willing to pay or transfer the subject matter of the originating summons to be under the custody of the court pending resolution of the dispute between the respective claimants regarding who is entitled to the said sum. I think it would be unjust for the court to hold the applicant hostage to these proceedings yet it has no interest in the disputed sum. The question in regard to who shall be entitled to the disputed sum may be determined in a full trial. The court is yet to reach that part of the bridge. It will cross it when it reaches it. For the time being, this court is not convinced that the applicant's complaint should be addressed in any manner other than summarily.

I am not therefore persuaded by the argument advanced by Mr. Sehmi to the effect that the matters in dispute be determined in a full trial. No reason has been placed before this court to convince it that the facts of the case so far disclosed by affidavit evidence are so complex that they would require this court to resolve them by requiring the parties to adduce viva voce evidence. This finding does not however mean that upon the close of pleadings in these proceedings, the court may not reach a finding that the determination of the competing interest of the claimants in the disputed sum may well require to be determined by the parties adducing viva voce evidence. I find no merit with the objection raised by Mr. Sehmi regarding the manner of disposal of these interpleader proceedings by way of submissions. I direct the parties to file all their pleadings in support or in opposition of the originating summons within fourteen (14) days of today's date, and if need be, leave is granted for the filing of further affidavits.

The amount in dispute shall remain deposited with the interpleader pending the hearing on merits of the interpleader proceedings. The 4<sup>th</sup> respondent shall pay the costs of the applicant in respect of this objection.

**DATED AT NAIROBI THIS 27<sup>TH</sup> DAY OF JULY 2009**

**L. KIMARU**

**JUDGE**