



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KISUMU

CIVIL CAUSE 45 OF 2008

KAMRO AGGROVET LIMITED PLAINTIFF

VERSUS

CEVA SANTE ANIMALE 1st DEFENDANT

CEVA ANIMAL HEALTH PTY LTD. 2nd DEFENDANT

RULING:

The plaintiff **Kamro Agrovvet Limited** is a Limited Liability Company incorporated in the Republic of Kenya while the first defendant **Ceva Sante Animale** is a Corporation registered in France and operates in Kenya through the second defendant **Ceva Animal Health Pty Limited** which is registered in Kenya under the Companies Act (*Cap 486 Laws of Kenya*).

The Plaintiff's suit against the defendants is for an order of injunction to "*inter-alia*" restrain the defendants from entering into any other contract of distribution, marketing and sale of its products with any other person for the Kenyan market pending the determination and final resolution of the case and to restrain the defendants calling and consequently causing Barclays Bank of Kenya Limited to pay the sum equivalent to US dollars 200,000/= as the stand-by letter of credit No. 740LC010640 opened on the 7th December 2005, in favour of the first defendant in the plaintiff's account at Barclays Bank of Kenya Limited Plaza Business Centre and continuously renewed consecutively to expire on the 21st January 2009. The plaintiff is also claiming an order compelling the defendants to render proper accounts and payment by the defendants of KSh.35,659,628/32cts.

The suit was filed on the 14th May 2008, and was accompanied by a chamber summons made under Order 39 Rules (1) and (2) of the Civil Procedure Rules for a temporary injunction order pending hearing and determination of the suit. The chamber summons was in the first instance heard *ex-parte* on the same 14th May 2008, and temporary injunction orders were issued in terms of prayer (2) and (4).

The plaintiff was required to serve the defendants for inter-parties hearing of the chamber summons within 14 days.

The 28th May 2008, was fixed in the registry as the date of inter-parties hearing of the plaintiff's application.

However, on the 27th May 2008, the defendants filed a notice of motion dated 26th May 2008, for the

main orders that the order given ex-parte by this court on 14th May 2008, be discharged and that the suit be transferred from the Kisumu Registry to the Commercial (Milimani) Division of the High Court at Nairobi for further proceedings and disposal.

The Notice of Motion was heard ex-parte on that 27th May 2008, and upon being certified urgent was fixed for inter-parties hearing on the 28th May 2008.

In the meantime, the firm of Kaplan & Stratton Advocates, did on the 26th May 2008, file notice of appointment of advocates in respect of the first and second defendants. The notice of appointment of advocates in respect of the first defendant contains a sub-heading "*Under protest.*" It is not indicated under what provision of the law the notice was filed under protest. In any event, the notice served its intended purpose i.e. to put into the record the first defendant's appearance in the matter through Kaplan & Stratton Advocates.

Kaplan & Stratton Advocates has since the 27th May 2007, conducted itself as appearing for the first defendant in this matter. That being the position, why would the plaintiff file an application on the 19th June 2008, for leave to effect service of the summons together with its initial application upon the first defendant out of the jurisdiction of Kenya Courts.?

It is not difficult to decipher that the plaintiff merely wants to comply with the law regarding service outside the jurisdiction of our courts. It has however done so belatedly. It ought to have complied with the requirements of the law after receiving ex-parte orders on the 14th May, 2008.

The application by the plaintiff dated 19th June 2008, will reverse the progress so far made in this case. But it would appear that both defendants may not be uncomfortable with the application which may as well proceed ex-parte.

However, the scenario unfolding is quite intriguing and a demonstration of legal acrobatics at its best.

If Kaplan & Stratton Advocates have entered appearance on behalf of the first defendant, they must have gotten the necessary instructions meaning that somehow the first defendant in its base in France is very much aware of this matter. How else would it give instructions if it is ignorant?

In accepting to file a notice of appointment on behalf of the first defendant whether or not under protest, Kaplan & Stratton effectively become the advocate on record on behalf of the first defendant for purposes of receiving and answering process and all that appertains thereto. If they do not hold themselves as such, then they cannot purport to make any application and/or appear in this court on behalf of the first defendant. If there should be any meaningful prosecution of the plaintiff's applications dated 14th May 2008, and 19th June 2008, and the defendants application dated 26th May 2008, they (Kaplan & Stratton) should withdraw from representing the first defendants. Alternatively, the plaintiff may elect to proceed against either one of the two defendants.

Until and when Kaplan & Stratton gives an accurate and truthful picture of its representation of the first defendant, the court may not be in a good position to give directions on the course to be taken in respect of all the three applications. Proceeding any further without due clarification on the first defendant's representation would only complicate matters and make a mockery of the court process.

Read and Signed this 26th day of June, 2008.

J. R. KARANJA

JUDGE

JRK/mo.