



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

**Civil Case 1536 of 1995**

**AFRISON EXPORT IMPORT LIMITED ..... PLAINTIFF**

**VERSUS**

**NAIROBI CITY COUNCIL ..... 1<sup>ST</sup> DEFENDANT**

**RAFIKI ENTERPRISES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

**APPLICATION FOR LEAVE TO ENJOIN PROPOSED**

**INTERESTED PARTY TO SUIT – OFFICIAL RECEIVER**

**DATED 14<sup>TH</sup> APRIL 2008**

**1: Background**

1. There are various suits related to this present one that is before me. The cases are RMCC 4/91; RMCC 1239/93, Hccc1441/95 (OS), Misc Application 1135/07 and this current case Hccc1536/95.

2. The City Council of Nairobi had allegedly sold land

LR 7879/4 situated along Thika road to the 2<sup>nd</sup> defendant M/s Rafiki Enterprises Ltd for non payments of rates owed to the council. The registered owners then claimed that the value of sale was under estimated. A dispute ensued as to whether the said sale was regular or not.

3. It is without a doubt that a third party M/s Continental Credit Finances Ltd had advanced a mortgage to the registered owner. The suit having been sold they want their money.

4. Their notice was brought to this present suit where they are not parties to. They filed an application dated 14 April 2008 seeking to be enjoined to the said suit.

**II: Application 14 April 2008**

5. The applicant proposed interested party prayed that they be enjoined to recover Ksh.21 m advanced to the plaintiff. They were to safe guard their interest in this suit.

6. The applications was not opposed by the plaintiff. It was opposed by the 1<sup>st</sup> and 2<sup>nd</sup> defendant.

The 1<sup>st</sup> defendant claim there was no such thing as an interested party. This is only found in a Judicial Review. The 2<sup>nd</sup> defendant relied on the three decisions which brought out the fact that Liquidation under the Companies Act must first seek leave of the court or of the committee.

7. The case law of:-

i) **Trade Bank**

v

**L.Z Engineering Company**

CA 14/98

Gicheru, Tunoi, Owuor JJA

ii) **Tamil Enterprises**

**Official Receiver of Credit Finance Co. Ltd**

Hccc1914/99

iii) **Welcome Property**

v

**Karuga & 2 Others**

(2001) KLR 402

Ringera, J.

8. In order to bring such application the applicant refused to first seek the authority and leave of the committee or of the court to be enjoined as a party to this suit. No such authority has been first sought from the court or committee to indicate that the proposed interested party may be enjoined to the suit. The provision of the Company's Act has not been complied with.

9. (As to one related case the proposed applicant withdrew a suit on the same question).

10. I hereby decline to grant the prayers sought. The applicant requires to comply with the provision of the Company Act.

11. There will be costs to the respondents.

DATED THIS 18<sup>TH</sup> DAY OF JUNE 2008 AT NAIROBI.

**M.A. ANG'AWA**

**JUDGE**

C.N. Njenga instructed by D. Njogu & Co. Advocates for the Interested Party-applicant – present

S.N. Wachira instructed by Wetangula Adan Makhoha & Co. Advocates for the 1<sup>st</sup> defendant – present

M. Osundwa instructed by Havi & Co. Advocates for the 2<sup>nd</sup> defendant - present