

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 532 of 2006

INDUSTRIAL PLANT E.A. LIMITED (In receivership).....PLAINTIFF

- VERSUS -

STANBIC BANK KENYA LIMITED.....1ST DEFENDANT

Joint Receivers and Managers of

INDUSTRIAL PLANT E.A. LIMITED.....2ND DEFENDANT

R U L I N G

This is a very long and protracted matter. The parties to this suit have filed multiple applications seeking one prayer or the other. When the parties appeared before this court on 17th June 2008 for yet another application, this court was of the view that the matters in dispute ought to be heard and determined in a hearing in a full trial. The parties did agree by consent to conclude all preliminary issues, including discovery so that this case could be heard on the scheduled dates of 24th and 30th July 2008. The parties agreed to file their bundle of documents within twenty one (21) days of the said 17th June 2008. They later appeared before this court on the 21st July 2008 and confirmed to the court that the hearing of the case would proceed today, the 30th July 2008.

On perusal of the file in preparation of the hearing of this case, I noted that it was only the defendants who had filed their bundle of documents. In contravention and contempt of the orders of this court, the plaintiff failed to file their list of documents. Now the plaintiff is seeking an adjournment on the basis that they had filed suit against the advocate who was previously on record for the defendants seeking certain reliefs which goes to the root of the reliefs sought in this case. The firm of Walker Kontos & Company Advocates who were previously on record, upon being notified of the plaintiff's objection to their appearing for the defendants, did not seek to continue acting for the defendants. Instead, the firm of Oraro & Company Advocates were appointed to act for the defendants. If the plaintiff's concern was genuine, that the said firm's acting for the defendants would be prejudicial to the conduct of their case, then the fact that the firm of Walker Kontos & Company Advocates had ceased acting for the defendants can no longer be an issue preventing the hearing of this case.

The plaintiff was aggrieved by the conduct of the said firm of Walker Kontos Advocates. They have, rightly in my view, filed suit against the said firm. They will pursue their reliefs against the said firm in the said suit. The fact that the said suit has been filed does not have any bearing at all in the determination whether this suit should be heard or not. In view of the history of this case, it is clear that the plaintiff specifically filed the suit against the former advocates of the defendants to forestall the hearing of this suit. Having ruled that the pending of the suit against the firm of Walker Kontos & Company Advocates has no bearing to this case, and since the said firm of advocates has withdrawn from acting for defendants, I see no good reason why this suit cannot proceed to hearing as earlier scheduled. The application for adjournment is disallowed. The hearing shall proceed as scheduled.

DATED at NAIROBI this 30th day of July 2008.

L. KIMARU

JUDGE