



1. Land and Environmental Law Division

2. Subject of main suit: Land

LR Nyeri Municipality/Block 3130

a) Lease of a petrol station

b) Dispute of extension of lease

c) Lease executed by parties.

3. Application notice of motion 23.4.08

a) That the suit has and be marked as
compromised

b) Application opposed by respondent.

4. Held

Lease executed on 3rd October, 2007 for a term of 10 years between parties.

Application granted.

5. Case Law - Nil

6. Advocates.

G. Gitonga holding brief for K. Kiragu instructed by Hamilton Harrison & Mathews Advocates for the plaintiff – present

T. Liko instructed by Sichagi & Co. Advocates for the defendant - present

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI LAW COURTS)

CIVIL CASE 1274 OF 2005

BP SHELL KENYA LIMITED.....1ST PLAINTIFF

KENYA SHELL LIMITED.....2ND PLAINTIFF

VERSUS

NYERI DISTRICT CO-OPERATIVE UNION LIMITED....DEFENDANT

RULING

I Background

1. Plaintiff No. 1 B.P. Shell Limited had leased a land parcel Nyeri Municipality Block 3/30 where a petrol station was operating.
2. The lease was to be renewed and the defendants were resisting this lease to be renewed. Both plaintiffs 1 and 2 namely B.P Kenya Ltd and Kenya Shell Ltd sued for specific performance.
3. The parties signed a lease which was duly executed on 3rd October 2007.
4. The plaintiff filed this application of 23rd April, 2008 to mark the said suit as having been compromised.

II Application notice of motion dated 23rd April, 2008

5. The argument put forward by the applicant is that as the lease has now been drawn, signed, sealed and delivered there was nothing else left in this matter. The applicant relied on Mulla on the Civil Procedure Act v of 1908 1997 edition on the rule relating to compromise of suit, namely that this suit is compromised and has been merely been adjusted by a lawful agreement.
6. He also relied on several case law where a compromise of suit has been recorded by this court.

a) Kiambu Service Stores Ltd v Attorney General

(2001) LLR 2604 (CCK)

HCCC 1545/01 Ibrahim J

b) Njuguna v Mburu & Another

(1996) LLR 502 (HCK)

Waki J (as he then was)

7. The respondent opposes this method of comprising the suit. He asked questions as to his costs, questions as to the locus of the 1st respondent.

III Findings

8. In this case the two plaintiffs who are said to be the same shareholders but two separate companies state that they wanted a specific performance for a renewal of a lease before this court.
9. That lease was finally entered into and duly signed on 3rd October, 2007. There was nothing left.
10. The costs should be awarded to the respondent as they have succeeded in their prayers.
11. I would accordingly find that this application notice of motion dated 22nd April 2008 be and is hereby allowed. I mark this suit as compromised having been so adjusted by a lawful agreement.

12. I enter judgment that plaintiff No. 2 and defendant are hereby bound by the agreement so entered.

13. I award costs to the applicant.

DATED THIS 29TH DAY OF JULY 2008 AT NAIROBI

M. A. ANG'AWA

J U D G E

G. Gitonga holding brief for K. Kiragu instructed by Hamilton Harrison & Mathews Advocates for the plaintiff – present

T. Liko instructed by Sichagi & Co. Advocates for the defendant - present