

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 335 of 2008

PRINTING INDUSTRIES LIMITED.....1ST PLAINTIFF

MULTIPLE INDUSTRIES LIMITED.....2ND PLAINTIFF

VERSUS

BANK OF BARODA KENYA LIMITED.....DEFENDANT

RULING

This court heard the parties on 30th July 2008 on an application for injunction. Both parties made submissions and concluded their arguments. Ruling was reserved by this court for the 1st October 2008. There was a pending administrative issue that was being addressed by the presiding Judge the Hon. Lady Justice Lesiit regarding the manner which the initial ex-parte order was extracted. The file was placed before Lady Justice Lesiit to address the issue said administrative issue. It has been dealt with to the satisfaction of both parties.

However, the defendant's counsel made a strange request to Lesiit J. He sought an order for the matter to be mentioned before this court. Further to that, the defendant's counsel wrote a letter to the court making allegations that the plaintiffs' counsel could have misled the court when making submission regarding the interpretation of **Section 96** of the **Companies Act**. I think the procedure adopted by the defendant's counsel is not contemplated under the **Civil Procedure Act** and the rules made thereunder. Once arguments have been concluded, and a ruling reserved, and such a party discovers new facts or aspect of the law that may affect the outcome of the matter in dispute, such a party is required to wait the ruling of the court, and if he so desires, he can apply to review the ruling of the court or alternatively appeal to a higher court. It will not do for a party to correspond to the court regarding a matter, which is pending delivery of the ruling.

I am not sure what I can classify such a conduct to be - but I think it goes against the principle regarding the fair trial of a case. It is a practice, which in think, should be discouraged in the strongest possible terms. I will disregard the submissions made by counsel for the defendant, which in effect seek to re-open arguments, which were already concluded. The defendant should await the decision of the court and then it can take whatever action it deems appropriate in the circumstances.

DATED at NAIROBI this 1st day of SEPTEMBER 2008.

L. KIMARU

JUD