



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Suit 443 of 2007**

**CHLORIDE EXIDE (K) LIMITED.....1<sup>ST</sup> APPLICANT**

**ASSOCIATED BATTERY MANUFACTURERS LTD.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**ZAKAYO MUCHAI WAINAINA T/A CHLORIDE EXIDE SOLAR...RESPONDENT**

**R U L I N G**

The application is a Chamber Summons dated 11<sup>th</sup> September, 2008. It is expressed to be brought under section 5 of the Judicature Act, Section 63 of the Civil procedure Rules, Order XXXIX rule 1, 2 and 2A(2) and Order 52 rules 2(1) and (2) of the Civil Procedure Rules.

It seeks orders as follows:

- 1. THAT the Defendant/Respondent and or his agents be committed to prison for such period as would be deemed necessary by this Honourable Court for being in contempt of Court by disobeying and breaching orders granted on the 13<sup>th</sup> day of June, 2008.**
- 2. THAT the officer commanding Maua Police Station do enforce the injunction orders granted by this Honourable Court on the 13<sup>th</sup> day of June, 2008.**

It is grounded on four grounds namely:

- (a) THAT the Defendant/Respondent has disobeyed this Court's orders granted on 13<sup>th</sup> June, 2008 and Decree issued on 18<sup>th</sup> July, 2008 by infringing the Plaintiffs'/Applicants' trademark number 57835 comprising words "CHLORIDE EXIDE SOLAR" or any variations or derivations thereof.**
- (b) THAT the Defendant/Respondent was served with the aforesaid orders on 8<sup>th</sup> August, 2008.**
- (c) THAT the disobedience of the Court orders by the Defendant/Respondent has caused great embarrassment, loss and injury to the Applicants and further damage is likely to be suffered by the Applicants in the event that the disobedience continues unpunished.**

**(d) It is just and proper for the Honourable Court to grant the orders sought.**

I have considered the Applicant's affidavit in support of the application together with the submissions by counsel. The application is unopposed.

The brief facts of the case are that the Applicant obtained judgment against the Defendant as per the annexed decree. The very first order granted to the Plaintiff was a permanent injunction restraining the Defendant from infringing or continuing to infringe on the Plaintiff's trademark registration number 57835 comprising the words CHLORIDE EXIDE SOLAR.

The Applicant has shown that the decree was served on the Respondent on 8<sup>th</sup> August, 2008. The Applicant has annexed BN2 a letter from the Defendant to the Plaintiff Company in which the Defendant used the Plaintiff's trade mark. The letter is dated 2<sup>nd</sup> September, 2008. I am satisfied that there has been infringement of the Plaintiff's trade mark and therefore a violation of the court injunction issued against the Defendant.

I am satisfied that the Defendant is in contempt of court order and that the contempt is continuous. I will grant prayer 1 of the Chamber Summons application dated 11<sup>th</sup> September, 2008 and order the arrest and committal of the Defendant to prison for a period of two months.

Costs will be borne by the Defendant.

**Dated at Nairobi this 31<sup>st</sup> day of October, 2008.**

LESIIT, J.

JUDGE

**Read, signed and delivered, in the presence of:**

Opija for Applicant

N/A for Respondent

LESIIT, J.

JUDGE