

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Case 273 of 2008

PUNDA MILIA CO-OP SOCIETY..... PLAINTIFF

VERSUS

SAVINGS & LOANS (K) LTD.....DEFENDANT

RULING

Application dated 07.10.08 for review of orders made by this court. The outstanding prayer is No.3 in the Notice of motion.

Grounds are that the court delivered a ruling on an Originating Summons that is yet to be heard. That there was a mistake or error and there exists sufficient cause to review, set aside and /or vary the ruling.

The Chamber Summons dated 22.05.08 was seeking orders under XXXIX Rule 1 & 9. While the Originating Summons was brought under order XXXVI Rule 1 & 3, one of the prayers being whether injunction should issue and other orders.

The application heard on 10.07.08 is the chamber summons dated 22.05.08 for injunction was argued on the material contained in the Chamber Summons and Affidavits filed. But when the court wrote the Ruling, the handwritten record shows that the Ruling was on Originating Summons dated on 22.05.08. The Court proceeded to answer the questions stated under the Originating Summons numbered 1, 2 and 3.

It is quite clear that the court made the ruling under a mistake resulting in an error on record. The issues raised in the Originating Summons were never argued by the parties.

This is in contradiction to the rule of natural justice “hear both parties” before a decision can be made.

I therefore set aside the proceedings of 07.10.08 together with the Ruling thereof and order that the application be placed before another court for hearing and determination.

However, interim orders granted on 28.08.08 are reinstated pending hearing and determination of the said application dated 22.05.08.

It is so ordered.

DATED this 27th day of November, 2008.

JOYCE N. KHAMINWA

JUDGE