



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO**

Civil Suit 61 of 2006

KIPSIGIS TANK INDUSTRY CO. LTD PLAINTIFF

VERSUS

AGRICULTURAL FINANCE CORPORATION DEFENDANT

RULING

ON APPLICATION OF 17TH APRIL, 2008

I: Background

1. On the 13th July, 2006 M/S Kipsigis Tank Industry Company Ltd filed suit against Agricultural Finance Corporation the defendant herein concerning certain intended sale of security held by the defendant in furtherance of a loan advanced to the plaintiff. The defendant entered appearance on 19th July, 2006 through M/S Cyril S. Wayong'o Co. advocates of Nairobi.
2. The Plaintiffs then amended their Plaint to include two Plaintiffs and three new defendants. The defendants were able to raise a Preliminary Objection that the said amendments had been made without leave of the Court. It was then that the court in its Ruling of 4th December, 2007 struck out the same against the new two plaintiffs and three additional defendants. The original main suit stood as it had been filed.
3. On the 7th June, 2007 the 1st defendant had changed their advocates to M/S Sila Munya & Co. who had actively represented the 3 and 4 defendant. Thus when the arguments and Ruling was being made the said advocate was representing the 1st defendant.
4. The Hon. Judge commented that the said Plaintiffs may bring another application. This was filed on the 23rd May, 2008.
5. In the meantime, the defendants whose case was struck out against them filed for taxation. Believing that the said taxation may lead to execution against the Plaintiff, the Plaintiff's advocate filed an application under certificate of urgency and further prayed that the firm of M/S Sila Munyao do disqualify himself from acting for the 1st defendant.

Application 17th April, 2008

6. In their application the Plaintiffs claim that M/S Sila Munyao & Co. advocates had acted for one Kiprotich A. Siele whom he represented in HCCC 90/01 (*seen by court*). In this said case of Ayub Kiprotich Siele v National Bank of Kenya to the said Kiprotich Siele was a client of M/S Sila Munyao and had in his grasp all the confidential information required to bring a prejudicial case against him.

7. The said advocate admitted he represented one Ayub Kiprotich Siele but that he was not the same person as M/S Kipsigis Tank Industry Company Ltd. On being questioned further by the Court he admitted that the said Ayub Kiprotich Siele was in fact the director of the 1st Plaintiff herein. Nonetheless he did not see this as a conflict of interest.

8. The question before me is whether the said M/S Sila Munyao & Co. advocate be disqualified or not.

II Opinion

9. From the proceedings before Court the said M/S Sila Munyao has been on record for 3 and 4 defendants (*now struck out*) and later for 1st defendant. At no time did the Plaintiffs protest nor bring to the attention of the Court. This application can be termed as a “*red herring*” in that the main issue is that of taxation. The applicant requires to have dealt with the issue of taxation namely, no taxation is permitted to be undertaken till the finalization of the whole suit. The defendants whose suit have been struck out must await the finalization of the suit before they can tax their costs and or execute.

10. This application, if filed on its merit, would clearly show that the advocate M/S Sila Munyao must indeed bring it to the attention of the Court, his relationship with the said director of the company and his nondisclosure is prejudicial to the 1st defendant’s case.

11. I would believe that this is not the correct application to bring after one year. The 1st plaintiff had waived his rights to the same.

12. I am aware of another application being brought questioning and or to enjoin the original parties that would mean, the former client when the issue of conflict may rise again.

13. The advocate requires to accordingly step down in this matter. I hereby hold that he be disqualified for non-disclosure of the fact that he represented a director of the 1st defendant.

14. I do not award any costs to the application on grounds of delay in bringing this application to Court.

DATED this 13th day of November, 2008 at KERICHO

M.A. ANG’AWA

JUDGE

Advocate - S.K. Siele advocate instructed by M/S Siele Sigira & Co. advocates for the Plaintiff/Applicant

M. Sila advocate instructed by M/S Sila Munyao & Co. advocates for the Defendant/Respondent