



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT EMBU**

**Civil Case 28 of 2006**

**MIKIKI FARMERS CO-OP SOCIETY.....PLAINTIFF**

**VERSUS**

**THIKA COFFEE MILLS LTD & ANOTHER .....DEFENDANT**

**RULING**

Notice of Motion dated 11/8/2005 filed under Order 1 Rule 3, 10, and 22 of C.P.C seeking order that the 3<sup>rd</sup> party be added to the suit as defendant and not third party. The application is made by the Defendant Thika Coffee Millers Limited. The application is grounded on the statement that the presence of 3<sup>rd</sup> party as defendant to the suit is necessary in order to completely adjudicate on all the questions involved in the suit.

The application is supported by affidavit sworn by legal officer employed by defendant. It is this defendant who sought leave to serve third party Notice against Thika Coffee Mills Ltd. The third party in its defence denies that it was aware of the relationship of plaintiff and Defendant. The Third Party has admitted liability for prayers (a), (b) and (c) of the plaint against Applicant. The provisions of adding a third party to a suit is contained under Order 1 Rule 14 which states as follows 14 (1) where a defendant claims as against any other person not already a party to the suit hereinafter called third party.

- (a) that he is entitled to contribution or indemnity or
- (b) that he is entitled to any relief or remedy relating to or connected with the original subject matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff or
- (c) that any issue or question relating to or connected with the said subject matter is substantially the same question or issue arising between the plaintiff and the defendant and should be properly determined not only as between plaintiff and defendant but as between the plaintiff and the defendant and Third Party any or between any or either of them.....

He may by leave of court issue Third Party notice liability between defendant and the Third Party shall be determined as the court shall order under Order 1 rule 18.

I have perused the record and this application together with affidavits filed by the parties and arguments offered. I do not find any reason to grant orders sought by the applicant. The applicant is at liberty to raise any issues connected to this suit as between himself and the other parties in the suit namely plaintiff and Third Party.

I therefore dismiss this application with costs.

Orders accordingly.

Dated this 24<sup>th</sup> January, 2007.

**J. N. KHAMINWA**

**JUDGE**

**24/1/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Mr. Njagi for plaintiff (not interested in the Application)**

**Mr. Macharia for Defendant/Applicant**

**Mr. Mweu for Third Party**

**Ruling read in the open court in their presence.**

**J. N. KHAMINWA**

**JUDGE**