

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 1122 of 2001

PETALS & DÉCOR LTD.....PLAINTIFF

VERSUS

TAMCOM CONSULTING ENGINEERS.....1ST DEFENDANT

NATIONAL OIL CORPORATION OF KENYA.....2ND DEFENDANT

RULING

Before me is a Chamber Summons dated 17th July 2006 and expressed to be brought under Order 6 Rule 13(1) (d) and 16 of the Civil Procedure Rules seeking orders that the plaintiff's suit be dismissed.

The application is based on the grounds as stated on the body of the Chamber Summons and supported by an affidavit sworn by Lois A. Alela on 17th July 2006.

The plaintiff is represented in these proceedings by the firm of Mary Wangari & Co Advocates. Service was effected upon the Advocate by Registered Post using the last known address on record being P.O. Box 10463. Along with the said letter counsel for the defendant enclosed a Chamber Summons dated 7th July 2006.

When the application came up for hearing there was no appearance for the respondent.

Mr. Chelimo informed the court that the plaintiff's counsel was served by Registered Post using the last known address and proceeded to address the court.

But on close perusal of the return of service filed herein by Jinaro Kipkemoi Kibet he has deponed at paragraph 2 as follows:

“2” That on the 15th November 2006 I sent a letter dated 10th November 2006 to Mary Wangari & Co. Advocates the Advocates on record for the plaintiff herein by Registered Post using the last known address Box 10463 Nairobi. I annex hereto and mark JKK 1 a true copy of the certificate of posting”

But on perusing the court file, the address used by the said Mary Wangari Advocate as per the pleadings is P.O. Box 10463 – 00100.

This means therefore that the address used for service was a wrong one and for that reason I decline to grant the orders sought in the Chamber summons for lack of proper service.

Dated at Nairobi this 26th February 2007.

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J.L.A. OSIEMO

JUDGE