



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 14 of 2007**

**AIR CONNECTION LIMITED.....PLAINTIFF**

**VERSUS**

**M.R.C. NAIROBI E.P.Z. LIMITED.....DEFENDANT**

**R U L I N G**

This is an application by chamber summons dated 16<sup>th</sup> January, 2007 seeking the following main orders:-

“1. ....

2. ....

3. That the Defendant herein be ordered by this Honourable court to deposit the sum of US\$ 307,872.31 in court forthwith as security by way of execution before judgment pending the hearing and determination of this suit.

4. That in default of such security this Honourable Court do order the attachment before judgment of all or such part of the defendant’s machinery and equipment situated at the defendant’s textile plant within the Export Processing Zone in Athi River as shall be sufficient to satisfy the sum of US\$ 307,872.31 claimed in the plaint.

5. ....”

The application is brought upon under Order 38, rules 5, 6 and 12 of the Civil Procedure Rules. Section 3A of the Civil Procedure Act, Cap. 21, is also invoked. The following are the grounds as set forth on the face thereof:-

“(a) That the Defendant is well and truly indebted to the plaintiff in the sum of US\$ 307,872.31 in unpaid airfreight charges on its exports and imports account with the plaintiff.

(b) That the defendant has failed and/or refused to pay the said sum despite demands from the plaintiff and it has issued cheques which have been dishonoured upon presentation.

(c) That the defendant’s directors are foreigners of Sri Lankan nationality and the plaintiff has established through its private investigators that the defendant is in the process of disposing its plant and

equipment and/or removing the same from the local limits of this Honourable courts jurisdiction with a view to defeating its (defendant's) creditors.

(d) That unless the orders sought herein are granted and decree that the plaintiff will ultimately obtain against the defendant shall be rendered nugatory and meaningless as there will be no attachable assets within the local limits of this courts jurisdiction.”

There is supporting affidavit sworn by one WASANTHA RANASINGHE, who described himself as the General Manager – Textiles, of the Plaintiff.

On 16<sup>th</sup> January 2007 this court (Waweru, J.) issued a preliminary order for the Defendant to furnish security in the sum of US\$ 307,872/31, or its equivalent in Kenya Shillings, to produce and place at the disposal of the court, when required, all its machinery and equipment situated at its textile plant within the Export Processing Zone at Athi River. It was further ordered that in default there shall be conditional attachment before judgement of the Defendant's said machinery and equipment pending hearing *inter partes* and determination of the present application. Thus, the two main orders sought in the application were granted on a preliminary basis.

These preliminary orders, together with copies of the plaint and the application, were duly served upon the Defendant as is evidenced by the affidavit of service dated 22<sup>nd</sup> and filed on 23<sup>rd</sup> January 2007.

As happened, the Defendant did not furnish security as ordered. Attachment before judgement was not levied on account of closure of the Defendant's premises. The Defendant has not filed any papers in response to the application, which is therefore unopposed.

I have considered the submissions of the learned counsel for the Plaintiff. I have also read the affidavit sworn in support of the application and have perused all the documents annexed thereto. I am satisfied upon the materials placed before the court, *prima facie*,

that the Defendant is well and truly indebted to the Plaintiff as claimed. I am also satisfied that the Defendant, with intent to obstruct or delay the execution of any decree that may be passed against it, is about to dispose of or remove from the local limits of the jurisdiction of this Court, or is indeed in the process of so disposing of or removing, the whole or any part of its property. The orders sought are therefore merited, especially as the application is unopposed.

I shall in the circumstances grant the application as prayed.

Costs thereof shall be in the cause. Orders accordingly.

**DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JANUARY, 2007.**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2007.**