



**REPUBLIC OF KENYA**

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

**Civil Case 413 of 2006**

**ALOYS KAVEN CHEPKWONY (trading as Rift Valley Water Project)...PLAINTIFF**

**VERSUS**

**WORLD VISION KENYA.....DEFENDANT**

**RULING**

The Plaintiff by this Chamber Summons dated 24<sup>th</sup> April 2006 and expressed to be brought under Order XXXIX Rule 1 of the Civil procedure Rules and Section 3A of the Civil procedure Act seeks orders that the suit property namely, CT 211 Cantera Water Well Drill mounted on a Ford F700 Truck 4XX Chasis Registration Number KYN792 and Drilling Accessories, 2 Light Drilling Rigs, Deeprock Ram, 10 Trailer Mounted, Three Sullair Compressors and Spares, Miscellaneous Tools, Welding Machines and Generators, Twenty Pieces Drill Pipes and 2 Ford Trucks, be given to the custody of the Plaintiff for safe keeping pending the hearing and determination of this suit.

The application is based on the grounds that the suit property is in danger of being wasted, damaged and/or alienated by the Defendant; that the Defendant might remove or dispose of the property and frustrate this suit in the event of success; that the Plaintiff/applicant is willing to indemnify the Defendant as against any person that might rightfully claim against the Defendant in connection with the suit property.

The application is also supported by an affidavit sworn by the Applicant in which he avers that he had bought the suit equipment at a Government Public Auction and leased them to World Vision Africa for the purpose of drilling boreholes for the Pokot Community. That subsequently World Vision Africa ceased operating in Kenya and he came to learn that the said equipment was in the custody of the Defendant; that he seeks a declaration that the equipment belongs to the Plaintiff, unconditional release of the equipment to the Plaintiff and damages for unlawful detention of the equipment by the Defendant.

The application is opposed by the Defendant who has filed a replying affidavit sworn by MOSES OWUOTH on 18<sup>th</sup> December 2006 in which he denies the Plaintiff's claim and avers that the equipment was purchased by the World Vision International to which the Defendant is the Local Representative, that the equipment was purchased for the use by the Defendant and the Associated Churches of Kenya

the East Africa Christian Mission who were jointly carrying out a Water Drilling Project in Pokot; that the Plaintiff did not own the equipment and that the equipment is no longer in the Defendant's custody and in or about the 11<sup>th</sup> May 2006, the Defendant was instructed by one Mr. Richard Hamilton of the East Africa Christian Mission, the owner of the equipment to release it and deliver the same to one Thomas Muthee of the Word of Faith Church.

Essentially what the Plaintiff is seeking is a mandatory interlocutory injunction. A mandatory injunction is an equitable and discretionary remedy. For the court to grant the orders of mandatory injunction, several conditions have to be fulfilled. The conditions are:- that the party seeking the order has a strong case which the Defendant did not have a defence to, it also has to be established that an award of damages may not be adequate or assured and the court will also consider the conduct of the parties to the suit before the mandatory injunction is issued.

In **Kenya Breweries Ltd & Another Vs. Washinton Okeyo**, Civil Appeal No.332 of 2000 (Nairobi) (unreported) the Court of Appeal said at page 3:

**“The test to grant a mandatory injunction or not is correctly sated in Vol. 24 Halsbury’s Law of England 4<sup>th</sup> Edition para 948 which reads:**

**“A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but, in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempts to steal a match of the Plaintiff ..... a mandatory injunction will be granted on an interlocutory applications.”**

The Plaintiff’s application does not meet this test. First there is no special circumstance. Secondly there is no documentary evidence to show that the plaintiff had purchased the said equipment. And lastly the said equipment are no longer in the custody of the Defendant.

The result is that the application has no merit and it is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 26<sup>th</sup> day of April 2007.

**J.L.A. OSIEMO**

**JUDGE**