



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 1364 of 2000

JOGINDER SINGH t/a AHUJA INTERNATIONAL.....PLAINTIFF

VERSUS

ENTERPRISE MACHINE TOOLS LIMITED.....DEFENDANT

RULING

The application before the court has been brought by the Plaintiff. It is expressed to have been brought under U/O 13(1) (a) and (b) of the Civil Procedure Rules and Section 3A of the Civil Procedure Act and all other enabling provisions of the law.

The application seeks two prayers:-

- (1) That the Honourable Court does **strike off the Defendant's defence herein as disclosing no reasonable cause of action and being frivolous and vexatious;**
- (2) That the Honourable Court does, on granting prayer (1) above, subsequently enter judgment for the Plaintiff as prayed for in the Plaint, that is:-
 - (a) **By adopting and passing as against the Defendant the sum as decreed in the High Court Case No. 434/96 as passed in the High Court Sitting in Jalandhar India for US\$47,166/= with damages, costs interest and future interest OR**
 - (b) **By ordering judgment as against the Defendant for the sum of US\$47,166/= with interest at 25% from the 30th of March, 1995, until interest in full, or such interest as the honourable court shall deem fit and just in the circumstances.**

I find the application bad in law and incurably defective as, a part from Section 3A of the Civil Procedure Act which preserves the inherent powers of the court but does not by itself empower an applicant to bring any application before the court, the other provision of the law invoked is very strange. I find it difficult to decipher what the Applicant meant by U/O 13 (1) (a) and (b). The powers of the court to grant the prayers sought have not properly been invoked. See **AFC –vs- RONO (2003) KLR 113.**

Looking at prayer 1 and 2, the rules under which each prayer can be granted is distinct. The court cannot assume what the Applicant meant by the rule invoked. There are prerequisites to be met before the court can grant an application depending on the rule cited in support of the application. The Applicant has to satisfy the court that the requirements of the law invoked have been met before the prayers can be

considered. As the Applicant before the court relies on non existent legal provisions, the Applicant cannot be said to merit the prayers sought.

Due to the defect in the application noted, I will strike out the entire application dated 24th November, 2003 with costs to the Respondent.

Dated at Nairobi this 8th day of June, 2007.

LESITT, J.

JUDGE

Read, signed and delivered in presence of :-

Ndirangu holding brief for Mutua for Applicant.

N/A for Respondent.

LESITT, J.

JUDGE