



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

**Misc Appli 974 of 2006**

**ELIJAH MIRA WAINAINA ALIAS ELIJAH MILLER.....PLAINTIFF**

**VERSUS**

**INTERACTIVE MEDIA SERVICES LTD.....DEFENDANT**

**RULING**

By way of this Chamber Summons dated 23<sup>rd</sup> June 2006, the Applicant seeks orders that the Defendant either by itself, its agents, servants and/or employees be restrained by an order of injunction from selling ringtones from the Kikuyu Gospel song known as ‘NIGUTHONDEKA NJIRA’ or in any way howsoever infringing on the Plaintiff’s artistic works of music/copyright till the hearing and determination of this suit. The applicant also seeks the costs of this application. The application is based on the grounds as stated on the body of the Chamber Summons and also supported by an affidavit sworn by the Applicant.

Mr. Kaburu counsel for the Applicant submitted that the Plaintiff is the sole author of the song known as ‘NEGUTHONDEKA NJIRA’ and he is the owner of the copyright. On 4<sup>th</sup> March 2006 he discovered that the Defendant is selling ringtones derived from his said song and when he learned of the infringement of his copyright by the Defendant he sent them a demand notice requiring them to stop the infringement of his copyright but to no avail. He was forced to file this suit and in the meantime he sought temporary injunction as prayed in this application.

The Respondent was served but did not file any papers to oppose the application. The application being not opposed, the same is allowed in terms of prayers 2 and 3 of the Chamber Summons dated 23<sup>rd</sup> June 2006.

Dated and delivered at Nairobi this 18<sup>th</sup> July 2007.

**J.L.A. OSIEMO**

**JUDGE**