

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA**

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

CIVIL CASE 311 OF 2007

CROWN CLOTHING (K) LTD. PLAINTIFF/APPLICANT

VERSUS

SHETH AGENCIES (1980) LIMITED 1ST DEFENDANT/RESPONDENT

SANNEX ENTERPRISES 2ND DEFENDANT/RESPONDENT

RULING

In the Chamber Summons dated 20th June 2007, the prayers in respect of which the Applicant wants orders from me are prayers 3 and 4 as the other two prayers were granted earlier. The Chamber Summons is said brought under Order XXXIX Rules 1, 2, 2A, 3 and 9 of the Civil Procedure Rules, Sections 3A and 63 of the Civil Procedure Act. While prayer 4 is for costs, prayer 3 states as follows:

"THAT the honourable court pending the hearing and determination of this suit do grant a permanent injunction against the 1st Defendant, his agents, servants and/or employee including the 2nd Defendant herein from proclaiming, levying any distress, attaching and/or in any way interfering with the machinery and/or property of the Plaintiff within the property known as I.R. 31918/1 including the quite possession and occupation thereof."

The Respondents filed a Replying Affidavit and as a result the Applicant filed a Notice of Preliminary Objection dated 18th July 2007 to expunge the Replying Affidavit on the basis that it is defective and incompetent. That would have the effect of leaving the Applicant's Chamber Summons unopposed and I prevailed upon the Applicant and the Respondent argue the Preliminary Objection during the hearing of the Chamber Summons.

They did so and what has emerged is that while the applicant who is Plaintiff in this suit is saying that the Notice of Distress dated 24th April 2007 in the name of Crown Printers Limited and served upon "**Crown Printers Limited**" was issued against them the Applicant/Plaintiff – "**Crown Clothing (Kenya) Ltd**", the Respondents are saying that the Applicant/Plaintiff in this matter is a stranger as it is not "**Crown Printers Limited**" to which the Notice of Distress was directed by the Respondents. The Respondents therefore want this Chamber Summons be dismissed.

From what has been brought to my attention therefore, I do hereby dismiss this Chamber Summons with costs to the Respondents for the following reasons:

Firstly the Preliminary Objection by the Applicant is dismissed because there is no good basis for requiring Lalit Kumar Vakharia the deponent in the Replying affidavit dated 2nd July 2007, to disclose his source of information when he clearly states that he is aware of the matter in question from his own knowledge and from facts and records in his possession and it is not correct to say he filed no annexures. Further, no good basis to require stamp duty.

Secondly, the chamber Summons is dismissed because the Applicant has in my view failed to show that any of conditions in the case of **Giella –vs- Cassman Brown & Co. Ltd.** apply in this case where there is a pertinent question whether the Applicant is a stranger in this matter. In any case, this is a matter

where compensation by payment of damages would be sufficient.

Dated this 22nd day of October 2007.

J. M. KHAMONI

JUDGE