



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Civil Case 58 of 2007

ARTHUR NKONGE PLAINTIFF

VERSUS

WERU TEA FACTORY CO.LTD DEFENDANT

RULING

The application before seeks:-

“That this Honourable court may be pleased to restrain the defendant either through itself, servants, agents and/or employees from withholding monthly payments for the green tea leaves delivered to the respondent’s factory for each month”

That is clearly a mandatory injunction cleverly expressed as a prohibitory injunction. The settled approach as to whether to grant a mandatory injunction at an interlocutory stage is that the case must be clear and present special circumstances.

The court in Locaball International Finance Ltd V Agro Export & Others (1986) 1ALL ER at page 901 stated the law thus;

“ A mandatory injunction ought not be granted on an interlocutory application in the absence of special circumstances and then only in clear cases either where the court thought that the matter ought to be decided at once, or where the injunction was directed at a simple act which could be easily remedied

Moreover before granting a mandatory injunction, the court had to feel a high degree of assurance that at the trial it would appear that the injunction had rightly been granted

In the instant application it is the applicants contention that the respondent has flatly refused to pay to him Kshs.108, 423/=, being the value of green tea leaves delivered to the respondent.

The respondent, despite service did not respond to the application, neither was it represented during the hearing of this application. At this stage, without hearing the respondent’s position, this application cannot be described as clear. It does not present special circumstances. It is not, therefore, suitable for the grant of mandatory injunction.

For these reasons it is dismissed with no orders as to costs.

DATED AND DELIVERED AT MERU THIS 3RD DAY OF OCTOBER, 2007

W. OUKO

JUDGE