

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Civil Case 56 of 2007

KITHINJI KARIBA PLAINTIFF

VERSUS

WERU TEA FACTORY CO. LTD. DEFENDANT

RULING

In his application dated 15th June 2007, the applicant prays 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.”

Put another way, the applicant is seeking an order directing the respondent to pay the applicant for the green tea leaves delivered to in by the latter. That is clearly a plea for a mandatory injunction. The application is based on the grounds that in the years 2005 and 2006 the applicant delivered to the respondent a total of 7557.50kg of green tea leaves valued at Kshs. 111,334.30 which was acknowledged.

That the respondent has declined to pay on the ground that the delivery exceeded the applicant’s tea bushes. This was based on the investigation by the respondent, which, in the applicant’s view, was unreasonable, capricious and malicious.

There was no replying affidavit on grounds opposing these averments. As I have stated the order sought in this application is a mandatory injunction. It is now settled that such an order can only be made at any interlocutory stage in very clear and special cases.

In the present application, the court has only heard one side of the story. But even from that side it is clear that the respondent’s refusal to pay is based on some arguments. So even though the respondent has not replied to the application it is clear to me that this is not a clear case in which a mandatory injunction ought to issue. For that reason this application is dismissed.

Dated and delivered at Meru this 3RD day of OCTOBER, 2007.

WILLIAM OUKO

JUDGE