



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

**Miscellaneous Civil Application 279 of 2009**

**IN THE MATTER OF COMPANIES ACT CAP 486 LAWS OF KENYA**

**AND**

**IN THE MATTER OF TRANS OIL INTERNATIONAL LIMITED**

**ABDIWELLI SHARIFF ABO.....APPLICANT**

**VERSUS**

**UMER SULEIMAN KARA.....RESPONDENT**

**RULING**

The Plaintiff/Applicant filed the Notice of Motion under Section 165 of the Companies Act seeking for an order that a reputable firm of certified public accountants carry out an inspection of the company. Secondly, the directors of the company be restrained from conducting the affairs of the company to the exclusion of the Applicant. The Applicant also sought for an order restraining the Defendant from transferring or disposing the company's movable and immovable property.

This application is premised on the grounds that the applicant is a co-director and contributor of the company in which he is holding 30% of the shares, while the respondent owns 50%. The Respondent has denied the applicant access to the company's document and information pertaining to the financial affairs and management of the company. Thus the applicant is entitled to seek for order of inspection of the company's affairs. This application is also supported by the affidavit of the applicant in addition to the matters stated in the application, the applicant contends that the respondent un procedurally passed a resolution and sold the agency rights in a company called Unlube (K) Limited. The company has also been withdrawing large amounts of money with other signatories who ware not directors. There is also animosity between the Applicant and Respondent thus the Applicant believes his shares are in danger of being disposed. Thus Respondent should be compelled to disclose the position of the company.

This application is opposed on the grounds that the applicant should have filled a petition under the Company's Act. The present application is by way of Notice of Motion which is not supported by a plaint. Moreover the suit is not even against the company and there are no documents to prove that the applicant is a shareholder or director of the company. The respondent has been able to prove that the applicant run down the company. By a letter dated 18<sup>th</sup> August 2004, the applicant stated that he would have no claim over the company. There is no evidence whatsoever to enable this court grant the orders sought.

I have evaluated this application, I agree with counsel for the respondent this application is a non starter. It is brought by way of a Notice of Motion; there is no suit either by way of petition or plaint. The

applicant is seeking for inspection of the accounts of a company but the company is not even sued as a party, the suit is against a director. Even considering the merit of the application, the applicant has not attached any documents to show that he is a shareholder live alone a director of the company. He only annexed a certificate of registration of a company.

Accordingly the application is dismissed for being bad in law and lacking in merit with costs to the respondent.

Ruling signed on 27<sup>th</sup> November, 2007

M. KOOME

JUDGE