



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

Civil Case 124 of 2006

1. ABSOLOMO JAYUGA NGILIMAN
2. SAMSON MBECHA BOTA
3. SIMON NDIRANGU KIRUKWA
4. JORAM NZOYWA LAVATE
5. GEORGE MURIMI GATHIMA
6. WELLINGTON WACHIYE
7. GEOFFREY KIPTANUI CHEPTOCH
8. EZEKIEL MULONGA OIDUELE
9. TAMIMA WAMBOI KIHARA
10. ELIUD KHOMBE MULINGA
11. JOHNSTONE OTHIENO OTHIENO
12. PATRICK MUCHIRI MUNGAI
13. CHARLES BENJAMIN MUE
14. WILLY NJAU KAMAU
15. HUDSON MUNGOLE INDIAVO
16. JAMES NGURE KAMAU
17. PETER PANCRAS EKESA
18. SAMUEL N. NGERESA
19. SEBASTIAN DESTERIO WAKHAYA
20. BEN KIPKEMBOI AIYABEI
21. MATHEW SAINA
22. DAVID MUTINGU JAYUGA.....PLAINTIFFS

=VERSUS=

RIFT VALLEY TEXTILES LIMITED (IN RECEIVERSHIP).....DEFENDANT

RULING

This is an application made under Order 38 of the Civil Procedure Rules and S. 63 of the Civil Procedure Rules for inter alia the following orders:-

1. -----
2. That this Honourable Court be pleased to direct the Defendant to furnish Security and to produce any property belonging to it and place the same at the disposal of the Court or order the attachment of property that would be adequate to satisfy the amount claimed herein plus costs and interest.
3. That in the alternative this Honourable Court be pleased to make such interlocutory orders as may

appear to the Court to be just and convenient to secure the performance of any decree by the Defendant herein.

4. -----

This suit was filed against the Company on 20th November 2006. In paragraph 2 of the Plaintiff and the heading, it is clear that the Plaintiffs knew that the Company was under Receivership at the time the suit was being filed.

The causes of action are based on matters that took place before the Receivership and also matters after the Receivership. (see paragraph 5 of the Plaintiff). It is suggested that the company took over the liabilities which had occurred before the date of Receivership in May 1998.

In the Defence the Company said that the Company was placed under receivership. In the Defence, the Defendant did not raise any ground or point of law that the Defendant was non-suited. To the contrary, they joined issues with the Plaintiff and defended all issues to the hilt.

In any case, in the Court of Appeal, case of LOCHAB BROTHERS –VRES- KENYA FURFURAL CO. LTD (1983) KLR 259, it was held that :-

v A Receiver cannot sue in his own name as receiver. He has no property vested in him and so acquires no right of action by his appointment. Nor can the Court give a receiver leave to sue as receiver. The receiver's duty is to take care of and receive the property which is put under his charge and he is not at liberty and is not entitled to bring any action in his own name.

v That receivers were authorized to take proceedings only in the name of the Company, whose agents they were.

A fortiori, in this case, the Plaintiffs were perfectly entitled to sue the Company in its name and not the Receivers in their names as Receivers or otherwise. It would appear at this tentative stage that the Receiver was appointed by a debenture holder who had the legal interest over the assets of the company. However, the Receiver in this case did not file a Replying Affidavit to rebut the allegations of fact raised in the application. This Court therefore cannot disregard the facts alleged which have not been rebutted by the Company.

At this stage, it would appear that there is credible evidence that that assets of the company have been sold. The assets are substantial including factory premises, machinery and equipment.

This suit is still pending. Ultimately the Receiver will have a duty to account for the proceeds not only to the Debenture holder but to the Company and all other creditors. At the moment, the Company and the Receiver have not tried to shed some light on the amount for which the assets were sold and to give an account. This suit is pending and the Court is satisfied that the assets or property of the Company has been or about to be disposed of and/or that the proceeds of sale are about to be disposed of with intent to obstruct or delay the execution of any decree that may be passed against it.

The questions of limitation of actions can only be dealt with in the trial or in a substantive application by the Defendant.

In the interest of justice and in exercise of this Court's discretion, I hereby do grant prayers 2 and 3 of the Application dated 3/10/2007. In order to make it effectual and enforceable, I do hereby order the immediate attachment of the proceeds of sale of the assets of the Company to Rivatex East Africa Limited (i.e Moi University) pending the hearing of this suit and securing of the claimed amount in this suit to the extent of Kshs 20,000,000/= including provision for costs and interest.

In the alternative, the Defendant shall deposit a sum of Kshs 20,000,000/= in a joint account in the name of the Advocates on record within the next 14 days. Such amount shall be held in the said

ESCROW ACCOUNT until the hearing of the suit or further orders of the Court. The Defendant shall pay costs of the application.

DATED AND DELIVERED THIS 9TH DAY OF NOVEMBER 2007.

M.K. IBRAHIM,

JUDGE.