



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

**Civil Case 748 of 2005**

**ALLIANCE MEDIA KENYA LTD.....PLAINTIFF**

**VERSUS.**

**AT OUTDOOR (K) LTD.....DEFENDANT**

**RULING**

By way of a plaint dated 16<sup>th</sup> June 2005 the plaintiff filed this suit against the defendant and sought judgment for:-

- (a) A permanent injunction restraining the defendant, its agents or servants from trespassing or interfering with the sites that the plaintiff has leased from various landlords.
- (b) A permanent injunction restraining the defendant, its agents or servants from interfering with the right of the plaintiff to enter into and/or to continue with the contractual relationships with its clients and landlords and generally from interfering or attempting to interfere with the right of the plaintiff to carry on its business and to deal with such other persons or forms as it wishes.
- (c) A temporary injunction restraining the defendant its agents or servants from trespassing and/or interfering with sites that the plaintiff has leased from the various landlords pending the hearing and determination of this suit
- (d) A temporary injunction restraining the defendant, its agents or servants from trespassing and/or interfering with the right of the plaintiff to enter into/or to continue with contractual relationships with its clients and landlords and generally from interfering or attempting to interfere with the right of the plaintiff to carry on its business and to deal with such other persons or forms as it wishes pending the hearing and determination of this suit.
- (e) Damages for trespass.
- (f) General damages
- (g) Interest and costs

Simultaneously with the plaint the plaintiff filed a Chamber Summons under Certificate of Urgency in which he sought orders similar to those contained in the plaint. The Chamber Summons were heard the same day and ex parte order was granted.

The extracted order read as follows:

IT IS HEREBY ORDERED:

1. That the proceedings be served on the defendant.
2. That the application of 16<sup>th</sup> June 2005 be heard interparties on 30<sup>th</sup> June 2005.
3. That a temporary injunction be and is hereby issued restraining the defendant, its agents or servants from trespassing and/or interfering with sites that the plaintiff has leased from the various landlords pending the hearing interparties.
4. That a temporary injunction be and is hereby issued restraining the defendant its agents or servants from trespassing and/or interfering with the right of the plaintiff to enter into and/or interfering with the right of the plaintiff enter into and/or to continue with the contractual relationships with its clients and landlords and generally from interfering or attempting to interfere with the right of the plaintiff to carry on its business and to deal with such other persons or forms as it wishes pending the hearing interparties.
5. That an interim injunction do issue restraining the defendant, its servants or agents from trespassing onto or interfering in any way howsoever on sites which the plaintiff has leased from various landlords.
6. That an interim injunction do issue restraining the defendant, its agents, servants or howsoever from interfering or attempting to interfere with the right of the plaintiff to enter into any agreement or continue with such contractual relations with its customer as it wishes and generally interfering or alleging to interfere with the right of the plaintiff to carry on its trade or business in such a manner and deal with its customers as it wishes.
7. That the Honourable Mr. Justice Ransley has disqualified himself from hearing this case.
8. That leave be and is hereby granted to the Applicant to file a Supplementary Affidavit if necessary.

Issued at Nairobi this 16<sup>th</sup> day of June 2005.

The defendant on being served with this order filed a Chamber Summons also under Certificate of Urgency dated 20<sup>th</sup> June 2005 in which it sought among others: That the ex parte Order of 16<sup>th</sup> June 2005 issued by the Honourable Mr. Justice Phillip Ransley be discharged and/or be set aside.

In order to appreciate the issues involved in this application it is noteworthy to state that the defendant's application dated 20<sup>th</sup> June 2005 came up for hearing on the 30<sup>th</sup> June 2005. This is the date the court had given for the hearing of the plaintiff's application interpartes.

The plaintiff had brought his application under Order XXXIX of the Civil Procedure Rules which provides:

*Order .XXXIX Rule 3(2)*

*“In any suit for restraining the defendant from committing a breach of contract or other injury of any kind whether compensation is claimed in the suit or not, the plaintiff may at any time after the commencement of the suit and either before or after judgment apply to the court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any injury of alike kind arising out of the same contract or relating to the same property or right.”*

An exparte injunction can be challenged if the defendant proves that there was non-disclosure of material

facts. But the issue in this application is whether or not the ex parte injunction issued by the judge could be set aside.

Order XXXIX Rule 2 provides:

*“2” An ex parte injunction may be granted only once for not more than fourteen days and shall not be extended thereafter.”*

By the time this application came up for hearing, the ex parte order had lapsed and therefore there was no order to be set aside. The application had been overtaken by events. The defendant's application therefore fails and the same is dismissed.

I order that costs be costs in the cause.

Dated at Nairobi this 13<sup>th</sup> day of February, 2006.

**J.L.A. OSIEMO**

**JUDGE**