



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

**Civil Case 1274 of 2005**

**B.P. KENYA LIMITED .....**  
**.....PLAINTIFF**

**VERSUS**

**NYERI DISTRICT CO-OP UNION LTD. ....**  
**DEFENDANT**

**R U L I N G**

On the 3<sup>rd</sup> February 2006, the following applications came up for hearing before me:-

- (a) the Plaintiff's Chamber Summons application dated and filed on the 24<sup>th</sup> October 2005 in which interim restraining orders against the Defendant were granted, *ex parte*, by Njagi, J on the 24<sup>th</sup> October 2005 when the application was certified urgent.
- (b) the Defendant's Notice of Motion dated and filed on the 2<sup>nd</sup> December 2005 seeking to set aside the said interim orders pending which the hearing of the Plaintiff's said application of the 24<sup>th</sup> October 2005 should be stayed. This motion has not been certified urgent by the court.
- (c) the Plaintiff's Chamber Summons application dated the 16<sup>th</sup> January 2006 and filed on the 17<sup>th</sup> January 2006 seeking, *inter alia*, to join Kenya Shell Ltd. as a Plaintiff in this suit. This application was certified urgent by Mugo, J on the 18<sup>th</sup> January 2006.

As the parties were unable to agree as to which of the three applications should be heard first, both counsel made their respective submissions thereon leading to this Ruling.

Mr. Kimani, for the Plaintiff, urged that the Plaintiff's application dated the 16<sup>th</sup> January 2006 be heard first on grounds including that amendment of pleadings and joinder of parties was aimed at allowing a litigant to plead the whole of the claim he was entitled to make in respect of his cause of action: Central Kenya Ltd -v- Trust Bank Ltd. [2000]2 EA 365.

Mr. Liko, for the Defendant, argued on the other hand that as the Plaintiff had obtained the *ex parte* restraining orders against the Defendant by concealing material facts and other relevant material from the court, the Plaintiff was not entitled to any further hearing of the application dated the 24<sup>th</sup> October 2005 and the Defendant's Notice of Motion of the 2<sup>nd</sup> December 2005 should therefore be heard first: Uhuru Highway Development Ltd. -v- Central Bank of Kenya and Two Others CA (Civil Application No. NAI 140 of 1995 (UR.62/95).

I have considered the three applications in light of the respective submissions of both learned counsel. I have also taken into account the sentiments of Njagi, J expressed when the Defendant's application dated the 2<sup>nd</sup> December 2005 came up for hearing, *ex parte*, before His Lordship on the 2<sup>nd</sup> December, 2005. In declining to certify the application urgent, to certify the application urgent, the learned judge stated thus-

"I have read the application and the supporting affidavit. The Plaintiff's application is, by consent of the parties, coming up for hearing on 6.12.05. I can't see any *bona fides* in this application except to derail

the hearing scheduled for 6.12.05. I therefore direct that the concerns raised in this application be incorporated into and ventilated during the hearing of the matter listed for hearing on 6/12/05.”

With profound respect to the learned judge, I do not find any justiciable reason now advanced by the Defendant to persuade me to vary or depart from the course of action His Lordship directed.

Accordingly, I direct and order that the Plaintiff’s application dated the 16<sup>th</sup> January 2006 be heard on a priority basis and before the Defendant’s Notice of Motion dated the 2<sup>nd</sup> December, 2005 which motion shall in any event be heard thereafter and as a response to the Plaintiff’s application dated the 24<sup>th</sup> October 2005 as directed by the court on the 2<sup>nd</sup> December 2005.

It is so ordered.

Dated and delivered at Nairobi this sixth day of February 2006.

P. Kihara Kariuki

Judge