



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 49 of 2006

MUMIAS SUGAR COMPANY LIMITED.....PLAINTIFF

VERSUS

NJEWAKA SUPERMARKET.....DEFENDANT

RULING

The defendant was served with the plaintiffs application dated 13th February 2006 but did not attend court on day of hearing.

The plaintiff by chamber summons brought under order XXXIX Rule 1 and 2 of the Civil Procedure Rules, Sections 3A and 63 (c) and (e) of the Civil Procedure Act seeks an order of injunction be issued to restrain the defendant from packaging, selling, supplying or contributing sugar under the packets similar and or which is confusingly similar in get up to the sugar processed and packaged by the plaintiff.

The plaintiff arguments are that it is the proprietor of Trade Mark Number 51250 consisting of the words 'MUMIAS SUGAR' – *NATURAL SWEETNESS* Registered in class 30 part A of the Trade Mark Act. The plaintiff exhibited a copy of the Registration certificate.

That the plaintiffs sugar is marketed in a square pack bearing a label comprising the words 'MUMIAS SUGAR' and below these words is the words 'NATURAL SWEETNESS' in green small letters and on the upper part are green stripes and the lower part has blue stripes. The plaintiff exhibited a photograph of that packet.

The plaintiff further argues that its package of sugar in the country has acquired immense goods will and that its reputation is considerable and is recognised by its get up.

It is averred in the plaintiff's supporting affidavit that in January 2006, the plaintiff's agent purchased sugar in the defendant's super market which sugar had packaging in packs similar to those of the plaintiff. That the defendant is packaging that sugar and offering it for sale. The plaintiff exhibited a photograph of that sugar sold and packaged by the defendants.

Having seen that exhibit I do accept the plaintiff's contention that the defendant packaged sugar is similar to the packaging pack of the plaintiff so as to be an attempt to pass off the defendant's sugar product as that manufactured, processed and packaged by the plaintiff. That even the colour of the defendant pack are similar to the plaintiffs. The impression that all these similarities given is that the sugar is the plaintiff's sugar and is designed so as to pass off the product as that of the plaintiff.

In view of the foregoing I do find that the plaintiff has shown a prima facie case with probability of success and does satisfy the first test of GIELLA – V – CASSMAN BROWN CO. LTD [1972] E.A. 358. The plaintiff is deserving of the order of injunction.

The order of the court is that: -

Ø That a temporary injunction be issued to restrain the defendant whether by itself, its servants, its directors, officers or agents or any of them from packaging selling, supplying or contributing sugar under the packet and or packs that are similar and or which is confusingly similar in get up to the sugar processed and packed by the plaintiff.

Ø That the plaintiff is awarded costs of the chamber summons dated 13th February 2006.

Dated and delivered this 26th May 2006.

MARY KASANGO

JUDGE