REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 534 of 2005

YARA EAST AFRICA LIMITED…….....….
…….PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED…….....……
DEFENDANT

R U L I N G

The plaintiff, at all material time was the customer of the defendant, whereby it operated and maintained a current account No. 239 – 775 - 0 401.

The plaintiff filed this suit against the defendant for orders that; a declaration that the defendant's action in freezing the plaintiff's current account No. 239 – 775 – 401 was unlawful, null and void ab initio; an order directing the defendant to forthwith lift the freeze on the plaintiff's current account No. 239 – 775 – 401; damages for breach of contract.

The plaintiff at the time of filing this suit filed a chamber summons dated 26th September 2005, which sought a mandatory injunction to compel the defendant to lift the freezing placed on the plaintiff's aforesaid account, and in the alternative that the plaintiff be allowed to utilize and operate its aforesaid account

The said application is based on the grounds that; the plaintiff is a business enterprise of repute carrying on trade as a commodity seller, supplier and distributor within the Republic of Kenya; that the plaintiff is also an agent of Kenya Revenue Authority for purpose of collecting and remitting Value Added Tax; the defendant without lawful authority, froze the plaintiff's current account at the defendant's Industrial Area Branch; that the defendants said action is a breach of contract and is an infringement of the privileged relationship between the customer and banker.

Lode Vanhoutee swore an affidavit in support of the application, whereby he sated that despite the plaintiffs protest that the act of freezing the plaintiff's aforesaid account would be adverse to its business, the defendant persisted to freeze the account.

Defence in their replying affidavit stated that upto August 2005; they had no reason to suspect that anything untoward was happening in the plaintiff's account. That in August 2005, the defendant discovered that there was loss of a lot of money, kshs 104, 288, 250. 60, loss that occurred through the defendant's Information Technology Department. That the loss occurred as a consequence of withdraw of the said money by defendant's member of staff and it was also discovered that out of the aforesaid loss kshs 17, 296, 000/- had been credited to the plaintiff's aforesaid current account.

That on that discovery been reported to the plaintiff, the plaintiff promised to cooperate, where upon,

on this suit and the injunction application being filed parties consented as follows:

"**By consent: the defendant is hereby directed to permit the plaintiff to operate its bank account No. 002 – 239 – 775 – 401, at Industrial Area, Nairobi,** provided **that at any one time the balance in the account will not fall below the sum of kshs 10, 000, 000/- until further orders**."

Defence stated in their replying affidavit.

"……. **That the reason why the sum frozen by consent was reduced to kshs 10, 000 was on the strength of the plaintiff's own admission in their letter dated 24.8.05 that they had no proprietory interest in a sum of kshs 10, 000, 000/- deposited in the account allegedly by M/s Mbwala Agro Supplies**.

The defendant argues that to allow the plaintiff to operate its account without retaining the amount of kshs 10 million will be detrimental to the defendant who may loose the ability to regain that amount wrongly withdrawn from its accounts.

The plaintiff seeks from the court a mandatory injunction. Volume 24 Halsbury's Law of England paragraph 848 provides: -

"**A mandatory injunction can be granted on an interlocutory application as well as at the hearing, but in the absence of special circumstances, it will not normally be granted. However, if the case is clear and one which the court thinks it ought to be decided at once, or if the act done is a simple and summary one which can be easily remedied, or if the defendant attempted to steal a March on the plaintiff mandatory injunction will be granted on an interlocutory application.**

In view of the above quote what is the position here. The plaintiff by a letter written to the defendant dated 24th August 2005, stated:

"**For the last two credits of kshs 4, 500, 000 and kshs 5, 5000, 000 we have not supplied any goods**"

This was in explanation on what the credits in the plaintiff's account related to.

Further the plaintiff in its defence filed in the suit by the defendant, hereof in HCCC 507 of 2005 stated:

"….**the plaintiff had in HCCC No. 534 of 2005 compromised the figure of kshs 10, 000, 000/-."**

With the two above situation in mind, and bearing in mind the consent recorded between the parties, hereof, on 3rd October 2005, it is not clear why the plaintiff now seeks to have an order to remove the freeze on kshs 10 million, which the plaintiff has in the past shown to have no right over.

Above all I am of the view that the aforesaid consent bound the parties to retain kshs 10 million frozen in the plaintiffs account, having so consented I am of the view that consent can only be vacated by another consent or on orders being made by the court at conclusion of this suit.

I will, as a consequence of the matters stated hereinbefore, decline the plaintiff's application. Defendant's counsel stated that the defendant does not seek costs of the application, since no party is to blame for what has occurred, accordingly, the chamber summons dated 26th September 2005 is dismissed with no orders as to costs.

MARY KASANGO

JUDGE

Dated and delivered this 31st July 2006.

MARY KASANGO

JUDGE