

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

Civil Case 890 of 2001

PHAZE INDUSTRIES LTD.....
.....PLAINTIFF

VERSUS

SHAMAN HOLDINGS LTD.....1ST
DEFENDANT

SPRINGVALE HOLDINGS LTD.....2ND
DEFENDANT

SUDBURY HOLDINGS LTD.....3RD
DEFENDANT

RULING

The plaintiff made an application by Chamber Summons under Section 3A of the Civil procedure Rules seeking orders that an early hearing date be given for the plaintiff's application dated 10th April 2006 and the same be heard and determined on priority basis. A Preliminary Objection was taken on behalf of the defendants that the application was incompetent on the ground that the same is made under Section 3A of the Civil Procedure Act and an application based on Section 3A of the Civil Procedure Act can only be made by Notice of Motion and not by Chamber Summons. Mr. Ngatia referred to the case of **SALUME NAMUKASA VS. YOSEPH BUKYA 1966 EA 433**

where UDO UDOMA CJ said:-

“The application not having been brought by motion on notice is therefore incompetent and held that it was not properly before the court.”

And in **MORRIS & CO. LLTD VS. KENYA COMMERCIAL BANK LTD 2003 EA 605** Ringera, J had this to say:-

“An application for a mandatory injunction can only be made pursuant to the provisions of Section 3A of the Civil Procedure Act. And the procedural mode in that case is a Notice of Motion pursuant to Order L Rule 1 of the Civil Procedure Rules and held that the application was incompetent.”

Mr. Mbaabu counsel for the plaintiff in opposing the Preliminary Objection submitted that the authority quoted by counsel for the defendant is a Ugandan case and therefore not binding in this court.

That notwithstanding the Civil Procedure Rules applied in Uganda are similar to those applied in Kenya and the same was quoted with approval in the above Kenyan case.

The plaintiffs application having been made pursuant to the provisions of Section 3A of the Civil procedure Act it ought to have been brought under Order L Rule 1 by Notice of motion and not by Chamber Summons.

The Preliminary Objection is therefore upheld and the plaintiff's Chamber Summons dated 30th May 2006 is struck out for being incompetent. But the plaintiff is at liberty to file a competent application. The defendant is entitled to the costs of this Preliminary Objection and it is so ordered.

Dated and delivered at Nairobi this 14th day of July 2006.

J.L.A. OSIEMO

JUDGE