



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI**

MILIMANI COMMERCIAL COURTS

Civil Case 1408 of 1999

PABECO ENTERPRISES LTD.....PLAINTIFF

VERSUS

RABADIA BUILDERS.....DEFENDANT

R U L I N G

This is an application made pursuant to the provision of Order 29 rule 1 of the Civil Procedure Rules, Order 41 rule 4, and Section 3A of the Civil Procedure Act.

The applicant seeks the court's directions, that the plaintiff should serve him with a statement of the names and addresses of the persons who were partners of the defendant, at the time the cause of action accrued. The applicant also asks that there be a stay of execution until such time as he will have been provided with the names and addresses of the partners in the defendant firm.

The concern of the applicant is that when this suit was first instituted, the Plaintiff named him as the person who was trading as Rabadia Builders. Thereafter, the applicant filed a Defence, in which he disassociated himself from the firm of Rabadia Builders. In response to the Defence, the plaintiff amended the Plaintiff, so that the applicant's name was deleted therefrom.

The plaintiff has since obtained judgement against the defendant, and the applicant says that he is very worried that the said judgement could be executed against him. It was for that reason that the applicant now wishes to have the plaintiff compelled to provide particulars of the names and addresses of the persons who constitute Rabadia Builders.

In response to the application, the plaintiff contends that it is wholly incompetent. It was submitted that if the applicant's goods were to be wrongly attached, in the process of execution of the Decree herein, the applicant would be entitled to take out objection proceedings.

I hold the considered view that if the applicant was not a part of the defendant, Rabadia Builders, he should have no reason to worry about having his own property affected in any manner, through the process of execution which was directed against the defendant. Should the plaintiff or anyone else cause execution to be levied against any property that did not belong to the defendant, the person whose property was so affected would definitely have recourse, through objection proceedings.

As at the moment, the applicant has not provided the court with any material from which it could be discerned that the plaintiff (or any other person) had the intention of levying execution against him. In

effect, the applicant is being no more than speculative, when he expresses the worry that the Decree herein could be executed against him.

I would agree with the plaintiff that in paragraph 2 of the Amended Defence, the defendant did admit its description as contained in the Plaintiff. The said description was in the following terms, at paragraph 2 of the Plaintiff;

“The Defendant is a firm registered in the Republic of Kenya and carrying on business at Nairobi and its address for service is P. O. Box 10612 Nairobi.”

Of course, that description has the address of the defendant, but does not contain the names of the persons who are the partners in Rabadia Builders.

So, the question is whether or not the applicant was entitled to demand the names of the partners in Rabadia Builders.

I believe that the answer is to be found in the provisions of Order 29 rule 1, of the Civil Procedure Rules, which reads as follows;

“Any two or more persons claiming or being liable as partners and carrying on business in Kenya may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of accruing of the cause of action, and any party to a suit may in such case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the court may direct.”

Pursuant to the rule, the persons who may apply to court for a statement of the names and addresses of the partners in a firm are **“any party to a suit.”**

Therefore, since the applicant is not a party to the suit, he lacks the requisite locus to bring this application. I believe that there was good reason for limiting the persons who could bring applications under Order 29 rule 1. If there was no such a limitation, it is conceivable that any third parties, including busy bodies who had no interest in the suit, could then use existing suits as channels through which to conduct searches for purposes of ascertaining information about the constitution of firms which were parties to suits. As can be imagined, the opening up of cases, so as to allow such processes could easily derail the cases.

I therefore hold that because the applicant is not a party to this suit, it is not open to him to seek the orders sought. Accordingly, the application dated 3rd August 2005 is hereby dismissed with costs.

Dated and Delivered at Nairobi, this 16th day of October 2006.

FRED A. OCHEING

JUDGE