



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 792 of 2003**

**BUBAL CORPORATION (SUING AS A FIRM).....PLAINTIFF**

**VERSUS**

**SOS KINDERDORF INTERNATIONAL.....DEFENDANT**

**RULING**

The Defendant has brought two applications before court. The first is a Notice of Motion dated 13<sup>th</sup> September, 2006 brought under Order X Rule 14, 15, 16 and 17 of the Civil Procedure Rules. The Defendant seeks that the Plaintiff will within 10 days produce for inspection by the Defendant or its advocates the original documents referred in its list of documents filed in court on 18<sup>th</sup> January, 2005. Further the application seeks the plaintiff will permit the Defendant to make copies of those documents. The Defendant in affidavit in support state that the Plaintiff is claiming US\$43,000 the equivalent of about Kshs.3,354,000/=. The Defendant filed its defence on 23<sup>rd</sup> February, 2004. In that defence the Defendant denied being obligated to pay the Plaintiff the amount claimed in the Plaint. Further the Defendant denied entering into any agreement with the Plaintiff as alleged in the Plaint. The Plaintiff filed its list of documents on 18<sup>th</sup> January, 2005. Thereafter on 3<sup>rd</sup> February, 11<sup>th</sup> March, and 10<sup>th</sup> June, 2005 the Defendant's advocate wrote to the Plaintiff requesting that they furnish them with copies of the documents in the list. On 23<sup>rd</sup> June, 2005 the Plaintiff forwarded to the Defendant's advocate copies of those documents. The Plaintiff on 23<sup>rd</sup> September, 2005 were served with Notice to produce for inspection of documents. That to date they have not produced those documents for inspection. That application was opposed by the plaintiff and a replying affidavit was filed. In the replying affidavit the Plaintiff's advocate confirmed that he had spoken with the Defendant's advocate on telephone and that the Defendant's advocate instead of agreeing on the date of inspection rushed to court with this application. He therefore, concluded that the application is an afterthought.

The other application filed by the Defendant is a Chamber Summons dated 23<sup>rd</sup> September, 2006. The plaintiff by that application seeks an order that the Plaintiff shall supply to the Defendant all the particulars specified in the request for particulars dated 1<sup>st</sup> February, 2005. The Plaintiff again repeated the claim that is between the parties and stated that on 7<sup>th</sup> September, 2006 the Defendant's advocates were served with the answer to particulars drafted by the Defendant. That answer did not provide all the answers to the particulars as sought by the Defendant. The Defendant therefore, set out the particulars that the Plaintiff did not respond to. In response to that application the Plaintiff filed grounds of opposition whereby it stated that it had supplied the necessary particulars to the Defendant. That the particulars now being sought by the Defendant if answered to would prejudiced the Plaintiff. The Plaintiff therefore concluded that the Defendant's application is frivolous. The Defendant relied on the case of **H. W. Strachan (an alleged Lunatic) C. A. 1895**. The Plaintiff in relying on this case stated that it showed that a party cannot be made to disclose evidence to the opposite party. The Defendant in turn

relied on the case of **Rehemtulla v Jiwaji [1997] LLR 269 (HCK)**. In particular relied on the following passage:-

**“The requirement to give particulars reflects the overriding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly, without surprise and as far as possible to minimize costs.**

**The functions of particulars has been synthesized from various persuasive authorities based on Order 18 Rule 12(1) of the Rules of the Supreme Court in England which is in pari materia with our Order 6 Rule 8(1) Civil Procedure Rules cited above. They include: -**

- (a) to inform the other side of the nature of the case that they have to meet as distinguished from the mode in which that case is to be proved.**
- (b) To prevent the other side from being taken by surprise at the trial.**
- (c) To enable the other side to know with what evidence they ought to be prepared and to prepare for trial.**
- (d) To limit the generality of the pleadings.**
- (e) To limit and define the issues to be tried and as to which discovery is required.**
- (f) To tie the hands of the party so that he cannot without leave go into any matters not included.”**

The court will begin by considering Notice of Motion dated 13<sup>th</sup> September, 2006. The Defendant seeks by that application that it be allowed to carry out inspection of the Plaintiff's documents. There was no real objection raised by the Plaintiff to that application other than that the Plaintiff's advocate thought the application was an afterthought. That as it may be it is necessary for a party who desire to carry out inspection that they be allowed for such an inspection is a necessary part of discovery before trial. Accordingly the court will grant the order sought by the Defendant that they be allowed to carry out the said inspection.

In respect of the Chamber Summons dated 23<sup>rd</sup> October, 2006 I have considered the submissions made by the counsel in respect of that application. I have considered the pleadings in this matter and I am of the view that the particulars sought by the Defendant relate to positive averments made in the Plaint. Having so found I am of the considered view that it is necessary for the Plaintiff to respond to the particulars sought by the Defendant. The orders of this court therefore, are as follows:-

- (1) The Plaintiff is hereby ordered to allow the Defendant to inspect the documents in its list of documents filed in court on 18<sup>th</sup> January, 2005 within 30 days from this date hereof.**
- (2) The Plaintiff is ordered to supply particulars as enumerated in the request contained in paragraph 8 of the affidavit of Wilhem Huber sworn on 19<sup>th</sup> October, 2006. Such supply of particulars shall be made within 14 days from this date hereof.**
- (3) The costs of the Notice of Motion dated 13<sup>th</sup> September, 2006 and the Chamber Summons dated 23<sup>rd</sup> October, 2006 shall be in the cause.**

**MARY KASANGO**

**JUDGE**

Dated and delivered this 15<sup>th</sup> day of December, 2006.

**MARY KASANGO**

**JUDGE**