



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Suit 546 of 1998

KIAMBU SERVICE STORE.....PLAINTIFF

VERSUS

MBO-I-KAMITI FARMERS COMPANY LTD.....DEFENDANT

AND

D.N NJOGU & COMPANY ADVOCATES.....1ST GARNISHEE

TOM MAINA MACHARIA ADVOCATES.....2ND GARNISHEE

STANDARD CHARTERED BANK OF KENYA.....3RD GARNISHEE

AND

OL-MOROGI LTD.....INTERESTED PARTY

RULING

Mr. Mutiso sought to strike out two affidavits filed herein. One by Mr. Kirtish Chandul Karania sworn on the 20/5/2005 on the ground that no leave was given for it to be filed.

In my order of the 16/5/2005 I ordered that an official search of the Company's Registry be put in evidence and gave leave to a shareholder of the 1st Defendant Company to swear an affidavit relating to the beneficial ownership of Ol-Morogi Limited. Mr. Amuka in fact filed an affidavit sworn on behalf of the Plaintiff. Although this does not strictly conform to my orders I allow this affidavit as it deals with the beneficial ownership of Ol- Morogi Ltd.

Mr. Mutiso also sought to have struck out the Affidavit of David Njogu Gachanja of the 19/5/2005 on the same ground as he objected to Mr. Karama's affidavit and also because Mr. Gachanja had breached Advocate and Client Privilege.

Mr. Gachanja's firm of which he is the sole proprietor is the named 1st Garnishee in this suit and has sworn two previous affidavits in this matter.

Mr. Mutiso relied on **Regina Vs Derby Magistrates Court (1996) AC 487 in which Lord Taylor at page 507** states as follows:

“The principle which runs through all these cases and the many other cases which were cited is that a man must be able to consult his lawyer in confidence, since otherwise he might hold back half the truth. The

client must be sure that what he tells his lawyer in confidence will never be revealed without his consent. Legal professional privilege is thus much more than an ordinary rule of evidence limited in its application to the facts of a particular case. It is a fundamental condition on which the administration of justice as a whole rests.”

In that case the Lord Taylor held that the cases of **Regina Vs Barton and Regina Vs Ataou** were wrongly decided. These are the two cases on which Mr. Muruiki relied. All these cases cited were in respect of statements made by an accused person to his solicitor. It is clear that these statements are privileged and should not be admitted into evidence by the accused’s advocates.

Privilege will obviously extend to confidential matters related by a client to his advocate but it is necessary to look at what has been disclosed by the advocate in order to determine whether it is knowledge acquired as a result of confidential information or facts disclosed to an advocate in the course of his duties in this case to Gachanja from a client.

A court is entitled to be told the truth and be acquainted with the facts relevant to the matters in issue.

What is deponed to by Mr. Gachanja in this matter are facts relating to the beneficial ownership of Ol’Morogi Ltd which is the res gestae of the matters before me. I do not see that any privilege attaches to the matters sworn to by Mr. Gachanja. These are matters directly relevant to the issues arising from the garnishee order served on Mr. Gachanja’s firm and which he is bound to disclose as one of the garnishees in this case. A garnishee is in my view bound to disclose on whose behalf he hold moneys to enable the court to make the appropriate orders.

I admit both affidavits into evidence for the reasons given.

DATED and DELIVERED at NAIROBI on 31st May 2005

P.J RANSLEY

JUDGE