



Jurisdiction

1. Whether the High Court has jurisdiction to stay criminal proceedings and grant a declaration in an interlocutory application
 2. S 103 of Industrial Property Act No.3 of 2001.
- Jurisdiction of the tribunal

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 509 of 2005

UKWALA SUPERMARKETS1ST PLAINTIFF

ANIL DHINGRA2ND PLAINTIFF

JOSEPH MUKOSWE.....3RD PLAINTIFF

VERSUS

PAUL MBURU WAINAINA1ST DEFENDANT

KENYA INDUSTRIAL PROPERTY INSTITUTE.....2ND DEFENDANT

RULING

On the hearing of the Chamber Summons of the 16.9.2005 Mr. Kamau for the 2nd Defendant took Preliminary Objection to two of the orders sought namely those sought in prayer 2 and 4 as follows:-

(2) ***THAT this Honourable be pleased to stay proceedings in Chief Magistrate's Criminal case No.1261 of 2005 pending the hearing and determination of this application and suit.***

(4) ***A declaration that the television antennae and more particularly SONNET brand seized by the Defendants from the Plaintiffs do not infringe the Patent No.153 granted to the 1st Defendant and the plaintiff has a right to trade in these antennae, and an Order that the seized items be returned.***

It was his submission that this court has no jurisdiction to grant either of these prayers.

Mr. Kamau submitted that under Section 8 of the Law Reform Act, jurisdiction to grant an order of prohibition, which is what the order sought in prayer 2 seeks, can only be granted in an application for Judicial Review.

Further that the Attorney General is a necessary party to any such order as, as the application stands at

present it is aimed at no one and there is no one to oppose it.

On the question of the proposed declaration sought in prayer 4, under Section 103 of the Industrial Property Act No.3 of 2001 a Tribunal is set up to determine questions relating to the revocation or invalidation of a patent. This application has to be brought within 9 months from the date of publication of the grant of patent.

Mr. Gichachi supported the preliminary objection.

Mr. Omulele opposed the Preliminary objection.

I accept the submission of Mr. Kamau that this court has no jurisdiction to stay proceedings in the Chief Magistrate's court in an application of this kind. If the applicant wishes to challenge those proceedings then the proper remedy is by way of Judicial Review to which the Attorney General will be the Respondent.

With regard to the prayer seeking a declaration, in my view this court has no jurisdiction at this stage to grant such a declaration. Whether or not the Applicant has infringed the patent of the 1st Defendant can only be determined after a full hearing of the matter on its merits.

This is not, however, raised as an issue in the Plaintiff but only obliquely in prayer (b) of the prayers in the Plaintiff. That is, however, not for decision now.

In the result I allow the preliminary objection. The applicant is however at liberty to pursue prayers 3 of his application. With regard to prayer 5 again this seeks a declaration, which cannot be granted on an interlocutory application.

Orders accordingly.

Dated and delivered at Nairobi this 9th day of November, 2005

P. J. RANSLEY

JUDGE