



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI COMMERCIAL COURTS**  
**CIVIL CASE NO. 925 OF 2002**

**NAKUMAT HOLDINGS LTD..... PLAINTIFF**

**- VERSUS -**

**KENYA BUREAU OF STATISTICS ..... DEFENDANT**

**RULING**

The plaintiffs by way of this notice of motion brought under order 39 Rule 1 and 2 of the Civil Procedures Rules and Section 3A of the Civil Procedures Act seeks order;

1. That the Defendant either by itself and or its agents, servants, officers and or any other person and or authority connected therewith be restrained by way of temporary injunction from harassing, tampering with the plaintiffs business interfering with goods held in stock and or with the directors and or servants of the plaintiff and or in any way taking possession of and collecting any goods held or sold by the plaintiff pending the full determination of this suit.
2. That the defendant either by itself and or its agents, servants, officers or any other person and or authority connected therewith be restrained from filing any other cases against the plaintiffs and or its directors pending hearing and or final determination of this suit.
3. That this Honourable court be pleased to order a stay of further proceedings and mentions in the Nairobi Chief Magistrate's criminal case No. 1868 of 2002 and Makadara Criminal case 10066 of 2002 in which the plaintiffs are the accused pending the hearing and final determination of this suit.

The application is based on the affidavit sworn by ATUL SHAH which alleges among others that the defendant is applying the law selectively to assist plaintiffs competitor UCHUMI SUPERMARKET in which the defendant has vested interest in that the defendant is under the docket of Ministry of Commerce which is the umbrella body of ICDC which has some shares in UCHUMI SUPER MARKET and the Ministry participates in the directorship of UCHUMI SUPERMARKET. That the provisions of the law are misinterpreted and misapplied in that in 1973 when the Act was enacted the retail business comprised of shops manned by shopkeepers behind counters that are commonly found in remote rural areas and that MEGA-ENTERPRISES like gigantic super markets were never envisaged or provided for under the standard Act Cap 496 Laws of Kenya. That a mere display of goods in a super market does not amount to an offer in law. It is merely an invitation to treat. That the defendant in the exercise of bad faith and in order to cause injury to the plaintiffs have charged them with an offence of selling substandard honey in criminal case No. 10066 of 2002 whilst the plaintiffs do not manufacture or import honey not to mention that honey is natural and is manufactured by bees and that no law can be enforced against a bee to compel compliance to produce honey of certain quality. In continuity of its bad faith, the defendant has threatened

to charge the plaintiffs in a criminal court for allegedly failing to register as manufacturers under the Standards Act Cap 496.

The reasons for the intended charges are that the plaintiffs buy sugar in bags and sell to the customers in smaller quantities as per the customers needs and purchasing power. In this case:-

1. Abuse of office by the defendant is alleged.
2. Conflict of interest is alleged.
3. Selective application of the law is alleged to assist the plaintiffs competitors is alleged.
4. Misinterpretation and misapplication of the provisions of the Act is alleged.
5. Harassment of the plaintiffs is alleged.
6. Bad faith is alleged.
7. There is also the issue as to whether or not an injunction can issue against the Government or a Government body corporate.

These allegations are denied by the defence. And this court cannot therefore adjudicate adequately these issues without the advantage of evidence and submissions by both parties. The plaintiffs notice of motion dated 25th July 2002 is allowed in terms of prayer 3, 4, and 5. Reasons reserved and to be given in judgment. Hearing date to be given on priority basis. Those are the orders of this court.

Dated at Nairobi this 30th day of August, 2002.

**J. L. A. OSIEMO**

**JUDGE**