



**REPUBLIC OF KENYA**

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

**MILIMANI COMMERCIAL COURTS**

**CIVIL CASE NO. 205 OF 2001**

**FURSYS (K) LIMITED ..... PLAINTIFF**

**VERSUS**

**THE DA GAMA ROSE**

**GROUP OF COMPANIES LTD. .... 1ST DEFENDANT**

**HORATIOUS DA GAMA ROSE ..... 2ND DEFENDANT**

**RULING**

Having heard the parties and their submissions, I find that on the correspondence and agreements annexed to the affidavits the defendants have shown a bona fide triable issue on whether or not they were the contracting parties with the plaintiff. I don't want to say more than that where a person signs as a Managing Director of a limited liability company, it is not plain and obvious that he and not that company or that he and the company can be enjoined in a suit against the company. That would appear to run counter to the basic foundations of company law in the separate and distinct personality and existence of the company and its Directors and/or shareholders.

It is also apparent from the correspondence that the defendants stand that "symphony" which is identified as the contracting party in the agreements relied upon and which is the business name of System Integration Ltd. is not introduced in the defendant's proposed defence as a chameleon strategy to delay the finalisation of the suit. And it is not a trick practiced on the plaintiff. Both the plaintiff itself and their counsel were fully aware of its identity and liability in the matter giving rise to the contract.

In the result, I must reject to plaintiff's motion with costs to the defendants whom I give unconditional leave to defend. I shall resist the temptation to order amendments to the plaintiff's plaint. I leave it to the plaintiff to weigh whether to proceed with the suit as presently framed or to amend the same.

**Dated at Nairobi this 16th July, 2001.**

**A.RINGERA**

**JUDGE**