

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 402 OF 2001

PRIMA BINS & PEST CONTROL LIMITED PLAINTIFF

V E R S U S

1. MUNICIPAL COUNCIL OF MOMBASA

2. KEEN CLEANERS LIMITED DEFENDANT

R U L I N G

The application by Notice of Motion seeks to set aside ex parte orders of injunction issued by this court on 7th August, 2001. It is brought under Order 39 rule 4, Order 50 rules 1 and 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The applicant herein maintains it is not a party to the suit but is affected by the orders issued as against the 2nd defendant in that it was served with the court order and the plaintiff maintains the orders are as against the applicant. However the applicant who entered appearance under protest and by an affidavit in support therein sworn by one David Langat the Managing Director says the company is known as Keen Kleeners Ltd. as opposed to Keen Cleaners as described in the pleadings.

Counsel for the applicant came to court by way of a certificate of urgency seeking the same to be certified urgent. He however went further to state that the court can grant the orders sought on ex parte basis without giving the other side a hearing. Order 39 rule 4 does give the court the discretion to discharge or vary or set aside an order for an injunction. Order 50 rule 2 makes it mandatory for the issuance of a notice to any affected parties of any motion filed

. The applicants application seeks to set aside the order of injunction on grounds that the plaintiff has failed to comply with a pre-condition set by the court and further on grounds of failure to disclose material facts when the order was sought. I have considered the issues raised in lime with the provisions of order 50 rule 2 certify the application as urgent but orders that the same be served and heard inter partes on the 30/8/01.

Dated and Delivered this 28th August, 2001.

P.M. TUITUI

COMMISSIONER OF ASSIZE