

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
HIGH COURT CIVIL CASE NO. 2066 OF 1998

JAMSONS INDUSTRIES LIMITED.....PLAINTIFF

-VERSUS

THE ATTORNEY GENERAL.....DEFENDANT

JUDGMENT

Background

The plaintiff was incorporated as a Company Limited on the 25th October, 1982 in the name of Jamsons Garments Limited. The plaintiff subsequently changed the name to Jamsons Industries Limited and was given a certificate by the Registrar of Companies on 4.5.95. On 4.6.1997 the Registrar of Companies registered another Company in the same name. This second company so registered opened an account with Guilders International Bank Ltd. which was used to bank cheques drawn in favour of the plaintiff into this account and then withdrawn. As a result, the plaintiff lost money to this new company. The defendant did not make appearance or file defence. The issue is whether by registering another company in the same name as the plaintiff, the Registrar of Companies was negligent. In his evidence Mr. Paresh Shah for the plaintiff explained how the plaintiff company was registered complying with all the requirements of the law. He explained further that they only came to know of the existence of the new company when they noticed from the account that a number of cheques did not find their way into the company's account with Barclays Bank in Market Branch. He enumerated the number of cheques which were diverted to the new companies account all totaling kshs.2,687,374. This amount according to his calculations includes interest on the amount diverted between 5th June and 27th June, 1997. He had to borrow Shs. 1 million from his bank to keep his business afloat. He paid interest on this amount at commercial rate.

I accepted Mr. Shah's evidence which was supported by documents showing the registration of the two companies. His claim on the diverted cheques was supported by the number of each cheque and the amount he also produced, the bank statement which showed the money borrowed.

By registering the second company the Registrar of Companies was clearly negligent. He failed to do what the department was set up to do and that is to regulate the registration of companies to ensure that no two companies would bear the same name. As a result of this negligence the second company was used to defraud the plaintiff company.

The defendant having failed to file a defence, operates as admission of all the allegations in the plaint except as to the damages. I find and hold that the defendant was negligent and there shall be judgement for the plaintiff. The plaintiff has also proved the damages he suffered as a result of the defendants negligence. The defendant shall pay the sum of Kshs. 2,687,374 as damages. The Registrar of Companies is ordered to strike off the registrar the second companies if he has not so yet.

Dated and delivered this 14th day of June, 2000.

KASANGA MULWA

JUDGE