



**Premium Brand Investments Limited v Halal Meat Products Limited & another;
National Assembly & 2 others (Interested Parties) (Civil Case E461 of 2022)
[2023] KEHC 17518 (KLR) (Commercial and Tax) (19 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17518 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL CASE E461 OF 2022
A MABEYA, J
MAY 19, 2023**

BETWEEN

PREMIUM BRAND INVESTMENTS LIMITED PLAINTIFF

AND

HALAL MEAT PRODUCTS LIMITED 1ST DEFENDANT

ABIB ZAMZAM ABDI T/A ABIB & ASSOCIATED

ADVOCATES 2ND DEFENDANT

AND

NATIONAL ASSEMBLY INTERESTED PARTY

PRINCIPAL SECRETARY, NATIONAL TREASURY INTERESTED PARTY

ATTORNEY GENERAL INTERESTED PARTY

RULING

1. Before Court is the plaintiff's Notice of Motion dated 21/11/2022. It is brought under Order 40 Rules 1(a), 2 and 4(1) and Order 51, Rule 1 of the [Civil Procedure Rules](#) and sections 1A, 1B and 3A of the [Civil Procedure Act](#).
2. The plaintiff sought an interlocutory injunction to restrain the 1st, 2nd and 3rd interested parties from debating, approving, settling or disbursing the proceeds of a judgment ("the settlement sum") delivered in favour of the 1st defendant in Nairobi High Court Case 1655 of 1986 ("the suit"), in the absence of the issuance by the 1st and 2nd defendant of suitably written letters of comfort to the plaintiff securing settlement of its remuneration for services rendered to the 1st and 2nd defendant.



3. The application is premised on the grounds that the plaintiff was engaged by the 1st and 2nd defendant to cause the processing and release of the proceeds of the settlement sum awarded in a judgment made in favour of the 1st defendant in the suit. The 1st defendant had totally been unable to collect or make any headway in that regard. That the plaintiff had obtained all approvals necessary to have the settlement sum released.
4. That only a lack of sufficient funds by the National Treasury had delayed the release of the to the 2nd defendant on behalf of the 1st defendant. That this was an issue that is beyond the plaintiff as it is not the National Treasury itself.
5. The plaintiff averred that it has become necessary for it to commence the present proceedings in order to secure the sums payable to it by the 1st and 2nd defendant, given the 2nd defendant's previous conduct in failing to honour her professional undertakings in the past and that unless this court issues the orders sought, the plaintiff would suffer loss and damage as it shall have no guarantees that it shall be able to collect its agreed remuneration from the 1st and 2nd defendant for the work already done.
6. In opposition to the present application, the 1st interested party filed a preliminary objection dated November 29, 2022 which the Court proposes to consider first.
7. In the objection, the 1st interested party asserted that for the reason that an interested party is bound by the issues raised by the Plaintiff, this Court lacks jurisdiction to issue any substantive orders against the 1st interested party.
8. That by dint of Article 119(1) of the *Constitution*, this court lacks jurisdiction to entertain the orders sought against the 1st Interested Party in the first instance for want of ripeness and exhaustion. That the plaintiff ought to have exercised his right to petition the National Assembly in the first instance pursuant to Article 119 (1). That the orders sought by the plaintiff seek to curtail the constitutional functions of the 1st Interested Party under Article 95 (4) of the *Constitution, 2010*, contrary to the doctrine of separation of powers.
9. The 1st interested party argued that the orders sought offend the mandatory provision of section 16 (1) of the *Government Proceedings Act* and therefore in the premises the court lacks jurisdiction to entertain and grant the orders sought by the plaintiff against the 1st interested party.
10. Section 16 (1) of the *Government Proceedings Act* provides: -
 - “(i) ... where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties.”
11. My understanding of the above provision is that, no order of injunction can be issued against the government. The 1st interested party is the National Assembly which is part of the Parliament of Kenya, an arm of government. It follows therefore that the Court may not issue the prayers sought in this application.
12. In the present case, the orders sought are for an injunction to restrain the interested parties from debating, approving, settling or disbursing the proceeds of a judgment. According to section 16(1) of the *Government Proceedings Act*, the court may only issue declaratory orders on the rights of the parties, which relief has not been sought by the plaintiff.
13. The other issue is the constitutional principle of separation of powers. That principle presupposes that each arm of government operates independently without undue interference from another arm



of government. This Court cannot interfere with the functions of Parliament unless it can be shown that in its exercise of such functions Parliament is violating the Constitution, an assertion that has not been illustrated in this case.

14. On this ground alone, I find that the application untenable.
15. That notwithstanding, I agree with the submissions of Learned Counsel for the 1st interested party that the doctrine of exhaustion also catches up with the plaintiff's application. Article 119(1) of the Constitution allows any person to petition Parliament to consider any matter within its authority. The plaintiff having an interest in the monies that the 1st interested party seeks to debate on, it should have petitioned Parliament appropriately.
16. In the case cited by Counsel for the 1st interested party of Geoffrey Muthiga Kabiru & 2 Others vs Samuel Munga Henry & Others [2015] Eklr, the court held: -

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the courts is invoked. Courts ought to be for a of last resort and not the first point of call the moment a storm brews. ...”
17. For the foregoing reasons, I find that there is merit on the preliminary objection dated November 29, 2022 and uphold the same. Accordingly, the application is struck out with costs.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MAY, 2023.

A. MABEYA, FCIArb

JUDGE

