



Mvita Oils Limited v New Generation Self Service Store Limited; Bhandari (Intended Interested Party) (Civil Suit E001 of 2022) [2023] KEHC 20126 (KLR) (12 July 2023) (Ruling)

Neutral citation: [2023] KEHC 20126 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CIVIL SUIT E001 OF 2022
GMA DULU, J
JULY 12, 2023**

BETWEEN

MVITA OILS LIMITED PLAINTIFF

AND

NEW GENERATION SELF SERVICE STORE LIMITED DEFENDANT

AND

MADHAV SUDHIR BHANDARI INTENDED INTERESTED PARTY

RULING

1. I see a number of applications in this file. However, this ruling relates to the application (Notice of Motion) dated 10th May 2023 filed by Mulago & Company Advocates for an applicant who is not disclosed in the body of the application.
2. The application was filed with a supporting affidavit sworn on 10th May 2023 by Mahboob Hussein Virji described as director of both applicant companies, whose identity of the parties who have come to court, is also not disclosed in the said affidavit.
3. The application seeks injunctive orders, as well as remittance of proceeds of sale of the assets and the defendant to be compelled to comply with the provisions of the *Insolvency Act*, 2015.
4. The application is opposed by the defendant through Grounds of Opposition filed by Muriu Mungai & Company Advocates, and dated 15th May 2023 in which it was contended that no leave had been sought from the insolvency court, and that the orders issued on 11th May 2023 were a nullity as they were issued without jurisdiction.
5. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed on both counsel for the parties.



6. Having considered the application, documents filed, and all arguments of the parties counsel, I will first of all state that the interim orders issued by this court on 11th May 2023 are not a nullity as suggested by the defendants, as this court has jurisdiction to issue interim orders, and once issued the same stand effective until they are either set aside or when they expire. Thus this court had jurisdiction to issue those interim orders.
7. This application will however not succeed, as in my view it is not competent and is incurably defective.
8. The first reason is that the application is fatally defective in form in the sense that it does not specifically bring out the identity of or clearly state the names of the applicant or applicants, and the relations of the applicant with the person who swore the supporting affidavit. Thus if orders are issued by the court in favour of or against the so called applicants, it will not be possible to enforce the said orders either by or against the anonymous applicant or applicants.
9. As courts do not act in vain, this application cannot thus stand as it is clearly fatally defective for non-disclosure of the litigant, and is for striking out.
10. The second reason why this application cannot stand is that, I can see herein filed, a ruling delivered on 30th March 2023 in Mombasa High Court Commercial Suit No. E034 of 2022, in which the court stated that applications in relation to this matter, where there is an appointed administrator, can only be filed with leave of the court.
11. Having not been referred to any such leave granted by the court, thus this application has no ground on which to stand. For that reason also, the application is for striking out.
12. I thus find that the application is fatally and incurably defective, and strike it out, with costs to the defendant. Any interim orders granted herein, are hereby vacated.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF JULY 2023 AT VOI IN OPEN COURT VIRTUALLY.

GEORGE DULU

JUDGE

In the presence of:-

Mr. Kangere for the defendant

Mr. Otolo court assistant

