



**REPUBLIC OF KENYA**

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

**PETITION NO. 2 OF 2019**

**MAVAZI TEXTILES AND BRANDING LIMITED.....PETITIONER**

**VERSUS**

**ANTI COUNTERFEIT URGENCY.....1<sup>ST</sup> RESPONDENT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS.....2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF CRIMINAL INVESTIGATIONS...3<sup>RD</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE.....4<sup>TH</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**BATA SHOE KENYA.....6<sup>TH</sup> RESPONDENT**

**DIRECTIONS**

1. The petitioners petition dated **16<sup>th</sup> January 2019** sought several prayers including prohibiting the respondents from breaching several Articles of the constitution it has enumerated therein as well as arraigning the directors and or its employees in court through a criminal process. The petitioner has also prayed for damages as a result of the loss it has incurred pursuant to the actions by the respondents especially the 1<sup>st</sup> and the 6<sup>th</sup> respondents.
2. The 6<sup>th</sup> respondent on its part has also filed a cross petition seeking interlia to stop the petitioner from breaching among others **Article 40 of the Constitution**.
3. The petitioner did as well file an application seeking conservatory orders against the respondents from proceeding with a criminal charge against it as well as its servants and or agents. The court in the initial stage issued the said conservatory orders which are still subsisting.
4. When this matter came up for hearing the court directed that the same be determined by way of written submissions. Indeed, all the parties have complied. The court has also perused the same together with the attached legal authorities.
5. The court having gone through the same is of the considered opinion that this petition cannot be determined by way of affidavits alone. There are weighty issues which needs adduction of oral evidence. The issue between the petitioner and the 6<sup>th</sup> respondent may not come out clearly unless witnesses are put in the dock.
6. Is it true for instance that the 6<sup>th</sup> petitioner blackmailed the petitioner? That is a serious issue which on the face of it needs to be thoroughly investigated through *viva voce* evidence.
7. The items which were recovered from the petitioner cannot be shown to the court via photocopies of their images. The court must see and have a feel of them. Whether they are counterfeits or not will only come out once the court physically has a look at them. This is the real borne of contention between the parties herein.
8. The issue of damages cannot be determined by affidavit evidence alone as well. Serious accounts ought to be presented.
9. Justice shall be done to the two petitioners after taking the usual long route of listening to the parties orally. The court is alive to the fact that much time has been lost but that is our litigation.

10. In the premises, the court makes the following orders;

a) **The two petitions shall be determined by way of oral evidence.**

b) **The petitioner shall be the plaintiff and the respondents the defendants.**

c) **Parties are hereby granted leave to file and exchange their witness statements and any other documentary evidence if need be within 30 days from the date herein.**

d) **The conservatory orders issued in favour of the petitioner stopping any criminal action against it or its directors and or employees is extended till the petition is determined.**

**DATED SIGNED AND DELIVERED VIA ELECTRONIC LINK AT NAKURU THIS 4<sup>TH</sup> DAY OF OCTOBER 2021.**

**H .K. CHEMITEI**

**JUDGE**