



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL CASE NO. 33 OF 2017

SETHI SARABJEET SINGH.....PLAINTIFF

-VERSUS-

HENRY MUSAVIRI AMBWERE.....DEFENDANT

RULING

1. The plaintiff and the Defendant are directors of a company named Molaplus Agro Limited.

The plaintiff alleges that the official and only bank account for the company is at Oriental Bank but that the defendant has secretly and without consent of the plaintiff opened two other accounts in names very similar to the company's name, thus Molaplus Investments Ltd at Stanbic Bank Account No. [.....] and Transnational Bank A/C No. [.....] with a view to embezzling their company funds by illegal deposits therein with the result that the plaintiff has suffered loss.

2. By a **Notice of Motion dated 28th July 2017** the plaintiff approached the court under provisions of Order 40 rule 1, 2, 4 of the CPR and Sections 3A, 1A and 1B of the Civil Procedure Act for Orders that the defendant be restrained by an order of injunction, by himself, his agents or servants from

(1) Accessing the company Molaplus Agro Limited and

(2) Conducting any business and operating the two Molaplus Investments Ltd bank accounts at Stanbic Bank and Transnational Bank.

(3) Pending hearing and determination of the application and thereafter the suit.

3. On the 17th August 2017 an ex parte order of injunction was granted (Hon. A. Ndungu J) pending hearing of the application interpartes.

4. I have noted that parties have attempted an out of court settlement. They have also filed submissions on the injunction application in support of their affidavits in support and in opposition.

I have also seen numerous correspondence between the parties and copies of Bank Accounts statements.

5. **Article 159 (12) (c) of the 2010 Kenya Constitution** encourages parties to explore alternative forms of dispute resolution including reconciliation. Mediation, arbitration and other forms that are not repugnant to justice and morality.

One such form is the Court Annexed Mediation which has been rolled out in various court stations including Nakuru law courts.

6. In my view, this suit in its entirety is one that mediation would resolve the dispute within a very short time. I say so because there is on record attempts by the parties to resolve the dispute.

Court Annexed Mediation will not only resolve the application but the entire suit on mutual grounds.

For that reason, I shall refer the dispute therein for mediation. The mediation registrar of this court shall appoint a duly accredited mediator whose terms of reference shall be to bring the parties together and determine the issues as appears in the pleadings, among others.

This exercise should take no more than 60 days from the date of appointment of the mediator.

7. The matter shall be mentioned on a date to be agreed upon, the interim order of injunction against the defendant is extended for a period of

70 days from the date of this order or until such time that the matter may be mentioned before the court.

Dated, signed and delivered this 16th Day of May 2019

J.N. MULWA

JUDGE