



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**COMMERCIAL AND TAX DIVISION**

**CIVIL CASE NO E028 OF 2018**

**SYNGENTA EAST AFRICA LIMITED.....PLAINTIFF**

**VERSUS**

**SOY-KABATIK AGRI CENTRE LIMITED.....DEFENDANT**

**RULING**

1. On 16<sup>th</sup> May 2019 the matter was mentioned for purposes of giving directions for 3 applications namely Notice of Motion dated 25<sup>th</sup> January 2019 which seeks to strike out the plaintiff's suit, Preliminary Objection dated 18<sup>th</sup> February 2019 and Notice of Motion dated 3<sup>rd</sup> December 2018 for summary judgment. The court directed the parties to file and exchange written submission to the Preliminary objection. The court further informed the parties that they were at liberty to file and exchange written submissions to the two applications. A hearing date was thereafter given for purposes of highlighting the submissions.

2. On 8th July 2019 when the matter came up for hearing, the plaintiff's had filed their submissions but the defendants filed an application dated 16<sup>th</sup> May 2019 seeking orders that the judge recuses herself from the case. The application was canvassed by way of oral submissions and in a ruling delivered on 31<sup>st</sup> October 2019, the judge dismissed the application dated 16<sup>th</sup> May 2019. The matter was thereafter mentioned on 5<sup>th</sup> December 2019 for further directions when counsel for the defendant stated that they had preferred an appeal against the ruling of 31<sup>st</sup> October 2019 and that they had also filed an application dated 11<sup>th</sup> November 2019 seeking the stay of proceedings herein pending the hearing and determination of the intended appeal. Counsel for the defendant sought directions that the application for stay of proceedings be heard first. The defendant's position was opposed by the plaintiff's advocate who termed it a delaying tactic and added that the defendant had been filing numerous applications in a bid to frustrate the hearing of the plaintiff's case.

3. This court has therefore been called upon to determine the order in which the pending applications will be canvassed. The court is conscious of the right of a party to have justice administered in a just fair and expeditious manner. This court is mindful of the fact that there are 3 applications and one preliminary objection pending before it. Two of the applications touch on the substance of the case while one is an application for stay of proceedings pending an appeal.

4. This court is alive to the fact that directions are discretionary and fall under Section 3A of the Civil Procedure Act which mandates the court to exercise its discretion and make necessary orders for the ends of justice to be met and to prevent abuse of the process. In **Walter Osapiri Barasa v Cabinet Secretary Ministry Of Interior & National Co-ordination & 6 Others** [2019] eKLR it was held that;

***“Directions issued by a court at the case management stage were discretionary in nature. The exercise of discretion to issue directions ought not to be interfered with unless it was shown that the Court misdirected itself in some matter and as a result it arrived at a wrong decision or that it was manifest that the Court was wrong in the exercise of its discretion and had thereby occasioned injustice.”***

5. In the present circumstances I find that the application dated 11<sup>th</sup> November 2019 for stay of proceedings goes to the root of the conduct and case management of the suit before this court. For this reason I find that it will be in the interest of justice that the application for stay of proceedings ought to be heard first.

**Dated, signed and delivered in open court at Nairobi this 9<sup>th</sup> day of December 2019.**

**W. A. OKWANY**

**JUDGE**

**In the presence of:**

Mr. Ondieki for the plaintiff

Mr. Langat for the defendant

Court Assistant – Sylvia