



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI HIGH COURT
COMMERCIAL & ADMIRALTY DIVISIONS
CIVIL SUIT NO 305 OF 2015

LORDS HEALTHCARE LIMITED.....PLAINTIFF

VERSUS

CIPLA LIMITED..... 1ST DEFENDANT

SURGIPHARM LIMITED.....2ND DEFENDANT

CONSOLIDATED WITH

PETITION NO. 593 OF 2014

CIPLA LIMITED.....PETITIONER

VERSUS

PHARMACY AND POISONS BOARD.....1ST RESPONDENT

LORDS HEALTHCARE LIMITED.....2ND RESPONDENT

RULING

1. By a ruling dated 18.8.2015 Lenaola J in Petition No. 305/2015 directed that inter alia;

“The matter herein being purely commercial dispute is transferred to the Commercial Division of the High Court for HEARING AND DETERMINATION...”

2. Subsequently, the Court file was transferred to Commercial Division and re-registered as Civil Case No.405/2015. Though the file appears to have changed from Constitutional to Civil case, the reliefs sought remained Constitutional in form and nature. The Orders sought seems to be in 3 broad category namely; declaratory, judicial review and injunctive.

3. The petition or rather now the HCC No. 405/2015 is still alive and pending as between the ***CIPLA LTD PETIONER/PLAINTIF AND PPB AND LORDS HEALTH CARE*** Respondents/Defendants.

4. HCC NO.305/2015 is between Health Lords as Plaintiff against CIPLA Ltd and Surgipham Ltd as Defendants. The reliefs sought in the Plaint are injunctive and damages. The core issues in both matters revolve and turn on the ownership of the drugs in issue and the trade mark and/ or passing off.

5. There is nothing in the pleadings of the two matters which prevent the hearing for the 2 matters via viva voce evidence. The ***Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules (MUTUNGA Rules)*** 2014 do allow the hearing of constitutional petition via viva voce evidence.

6. To expedite the disposal of the 2 matters, it is prudent and in line with Article 159,2,b of the Constitution of Kenya and Section 1A and 1B CPA to hear the two matters together to enable a determination of the two to be expedited. The Plaintiff's submissions revolve on attack on the report by PPB and loses sight that the issue was the mode of disposing the 2 suits.

7. The Defendants seems to be inclined to the petition (HCC 405/2015) being disposed first then deal with HCC.305/2015. The court did not want to be drawn into the issues which touch on the merit of the 2 matters. It is enough to note that the PPB report was not meant and did not determine the petition and that is why the Judge ordered the matter to be determined by Commercial Division.

8. The issues in the 2 matters are intertwined and revolve in the province of the intellectual property and ownership thereof of the drugs.

9. The Court is inclined to hear all the parties in the 2 disputes in the 2 matters.

10. The court thus makes the following Orders:

1. ***The 2 suits HCC. 305/2015 and 405/2015 will be heard together.***
2. ***The parties in the 2 matters shall comply within 30 days and file any relevant pleadings they deem fit within the same period.***
3. ***Parties to take date for directions for C.M.C after compliance. Costs in the cause.***

Dated, signed and delivered in court at Nairobi this 11th day of March, 2016.

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C. KARIUKI

JUDGE