



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT. NO.69 OF 2015

MEDIFLON ENTERPRISES LTDPLAINTIFF

VERSUS

MEDIFLON ENTERPRISES (K) LTD.....1ST DEFENDANT

HON. ATTORNEY GENERAL2ND DEFENDANT

REGISTRAR OF COMPANIES.....3RD DEFENDANT

RULING

1. The names Mediflon Enterprises Ltd and Mediflon Enterprises (K) Ltd are certainly similar. They are infact strikingly similar.

2. At the request of Mediflon Enterprises Ltd (The Plaintiff), on 23rd April, 2015 Gikonyo J. issued the following orders:-

“The Registrar should proceed and strike out the name of the 1st Defendant from the Register, if the 1st Defendant will not have provided their changed name to the Registrar in 3 working days starting from today. This means that on 29.4.2015 the 1st Defendant should be removed from the Register of Companies in the name it currently is registered. It is so ordered”.

3. MEDIFLON ENTERPRISES (K) LTD (The 1st Defendant) sees non-compliance with the Order and seeks the intervention of Court through the Notice of Motion of 31st May 2016 for the following Orders:-

4. THAT pending the hearing and determination of this suit this Honorable Court be pleased to issue an order of injunction restraining, the Plaintiff, its agents, servants employees and or persons acting on their authority from spreading rumors or misrepresenting that the 1st defendant company has closed shop, changed its name, been wound up, bankrupted, become in-operational or in any other way changing or misinterpreting the name of the 1st defendant company or interfering with its business activities.

5. THAT pending the hearing and determination of this suit this Honorable Court be pleased to issue an order directing the 3rd defendant to change the name of the 1st defendant to MEDIFLON KENYA LIMITED.

4. In the Affidavit of 31st May 2016 sworn by Lucas Muganda he depones that following the Order of Justice Gikonyo, the 1st Defendant submitted the following names to the Registrar of Companies (the 3rd Defendant on 28th April 2015:-

- a. MEDIFLON KENYA LIMITED
- b. MEDIFLON (E.A) LIMITED
- c. MEDIFLON HEALTH CARE(K) LIMITED

28th April 2015 was said to be the third working day of the day of the Order ie. 23rd April, 2015. The three names submitted were said to be available and reserved.

5. The 1st Defendant is aggrieved as the 3rd Defendant has not acted on that letter.

6. Following information from the rumor mills, the 1st Defendant has learnt that its name was wrongfully changed to MEDI SUPPLIES LIMITED. The 1st Defendant reads a collusion between the Plaintiff and the 3rd Defendant.

7. In response to that Application John Ogola Orimba and Alice Mwendwa sworn Affidavits on 13th June 2016 and 24th June 2016 respectively. The former is a Director of the Plaintiff Company while the latter is an Assistant Registrar of Companies. The two take a similar position which is simply this.

8. That the Order of the Judge of 23rd April 2015 was served on the 3rd Defendant on 28th April, 2015. Some two months prior, there was a change of name of the 1st Defendant from MEDIFLON ENTERPRISES (K) LIMITED to MEDI SUPPLIES LIMITED. That change followed a request by the 1st Defendant for a change of name through a Special Resolution by the 1st Defendant filed with the 3rd Defendant on 2nd February 2015.

9. That assertion surprised the 1st Defendant Company who through a Supplementary Affidavit of Lucas Maganda disowned the said Resolution and averred that it was fraudulent and a forgery. That the 1st Defendant had since reported the suspected forgery to the Police under OB 52/07/04/2016. The same was still under investigation at the time of the swearing of the Affidavit on 20th June 2016.

10. This Court has considered the Application, the rival Affidavits and the submissions of Counsel.

11. The Court record shows that on 10th March 2015, a Wambui appeared for both the 2nd and 3rd Defendant and addressed Court as follows:-

“We wrote in October 2013 to the 1st Defendant after realizing the anomaly. We accept there is an anomaly. We wrote again on 24.6.2014. They have not complied. We are of the view they should change name. We shall invoke Section 20 of the Companies Act. They have not responded. Two weeks will end on 18.3.2015 as per our letter dated 4.5.2015”.

12. Then the 3rd Defendant did not inform Court that the 1st Defendant, had pursuant to its own resolution, sought a change of name and that the same was effected on 11th February 2015, a month before the Court attendance of 10th March 2015.

13. And in the Affidavit of 24th June, 2016, Alice Mwendwa, an Assistant Registrar of Companies does not attempt to explain why Counsel had given the impression that the change of name had not been effected. Was it on the basis of some wrong information? There is a strange and loud silence on this.

14. It would be most confounding, would it not, that the Plaintiff would present this suit on 17th February 2015 seeking the deregistration of the 1st Defendant when in fact the 1st Defendant had on its own volition changed its name to MEDI SUPPLIES LIMITED on 11th February 2015. Or perhaps the Plaintiff was not aware of this change!

15. On the material placed before this Court, the Court believes, prima facie, the story as told by the 1st Defendant.

16. As to what orders need to be made, I bear in mind that this dispute arose in the regime of the Repealed Companies Act (cap 486) and the law applicable to this dispute would be the provisions of that repealed statute. Section 20(2)(a) of that statute provides:-

“If, through inadvertence or otherwise, a Company on its first Registration or on its registration by a new name is registered by a name which, in the opinion of the Registrar, is too like the name by which a company on existence is previously registered, the first –mentioned company may change its name with the sanction of the Registrar and, if he so directs within six months of its being registered by that name, shall change it within a period of six weeks from the date of the direction or such longer period as the Registrar may think fit to allow”

17. The 1st Defendant is desirous that its name be changed to **MEDIFLON KENYA LIMITED** being one of the names submitted to the 3rd Defendant. The Plaintiff insists that the name is still similar to its name. At the first instance it is the Registrar who should make the call as to whether, in his/her opinion, the second name is **too like** to the name of the Plaintiff. This Court does not intend to direct the Registrar one way or other unless it shall be demonstrated that he/she is acting improperly or in bad faith.

18. These are the orders that endear themselves to this Court.

1. The name MEDI SUPPLIES LIMITED shall be deregistered and the name of the 1st Defendant reverts to MEDIFLON ENTERPRISES (K) LTD.

2. The 1st Defendant, either by themselves agent and/or servants or any other person and/or authority are hereby restrained from trading or using the name MEDIFLON ENTERPRISES (K) LTD pending implementation of Order (3) below.

3. The 3rd Defendant shall within (3) working days hereof consider suitability of the 3 names submitted to it by the 1st defendant and report back to Court.

4. The Court shall thereafter make further orders.

5. Costs of the Application to the 1st Defendant.

Dated, Signed and Delivered in Court at Nairobi this 11th Day of November, 2016.

F. TUIYOTT

JUDGE

PRESENT;

Havi for Ochanda for Plaintiff

N/A for Defendants

Alex - Court clerk