

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

CIVIL CASE NO. 2503 OF 1995

MACMILLAN KENYA (PUBLISHERS) LIMITEDPLAINTIFF

V E R S U S

MOUNT KENYA SUNDRIES LIMITED.....DEFENDANT

R U L I N G

1. Learned counsels for the Plaintiff requested for mention of this case on 5th of May 2014 for purposes of directions on “enquiry into damages”. This is a reference to the **judgment dated and delivered on 23rd October 2008** (Visram, J). That judgment was in favour of the Plaintiff and was entered “as sought in the plaint”. All four reliefs in the plaint were allowed. Those reliefs were -

(a) An injunction to restrain the Defendant from doing the following acts: selling by way of trade or exposing or offering for sale its said Kenya Pictorial Tourist Route Map or any map based thereon.

(b) An order for delivery up of all such maps as are in the Defendant’s possession or control.

(c) An inquiry as to damages, or alternatively, an account of profits and payment of all sums found due upon taking such inquiry.

(d) Interest and costs.

2. With regard to relief (c) the learned judge further ordered as follows -

“...the parties are at liberty to apply for further directions and orders should they require same”.

3. As already seen, this judgment was passed on 23rd October 2008. It is not readily apparent why the Plaintiff has waited over 3 ½ years to seek directions with regard to enquiry as to damages.

4. It seems to me that this enquiry must be in the form of taking additional evidence. As a starting point, let the Plaintiff formally apply for such inquiry. The application will need to be supported by an affidavit setting out such evidence as it will rely upon in support of the quantum of damages sought. Once served the Defendant can then respond and the court will then give further directions on how to proceed. Those will be the directions of the court for the time being. It is so ordered. Costs will be in such application to be filed.

DATED AND SIGNED AT NAIROBI THIS 1ST DAY OF JULY 2014

H.P.G. WAWERU

JUDGE

DELIVERED THIS 9TH DAY OF JULY 2014