

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 59 of 2009

GILGIL DISTRIBUTORS LIMITED.....PLAINTIFF

VERSUS

MARTIN GIATHI MBURU.....DEFENDANT

RULING

The plaintiff claims in its plaint that by an agreement dated 13th January 2009 the defendant surrendered all his shares in the plaintiff company at a consideration of Kshs.1,030,690/- and relinquished his directorship in the company. In breach of that agreement the defendant has on diverse dates held himself out as a director of the plaintiff company and has attempted to obtain payments from the plaintiff's debtors and caused the plaintiff's bank account to be frozen on allegations of mismanagement of the company. The Plaintiff, in the circumstances, seeks a permanent injunction to restrain the defendant from holding himself as a director of the company or in anyway interfering with the company's operations.

Simultaneous with the filing of the suit the plaintiff filed an application for injunction under **Order 39 Rules 2 and 3** of the **Civil Procedure Rules** as well as **Section 3A and 63(e)** of the **Civil Procedure Act** and sought similar orders albeit on a temporary basis.

The defendant opposes the application on the ground that he has not relinquished his shares as alleged and asserts that he is still a director of the plaintiff company.

Having considered these averments and read the agreement dated 13th January 2009 as well as a letter allegedly written to the Registrar of Companies both of which the defendant has said nothing about, I am satisfied that the plaintiff has made out a prima facie case entitling it to a temporary injunction pending the hearing and disposal of this suit.

Consequently I allow this application and order that pending the hearing and determination of this suit the defendant is hereby restrained from acting, conducting and/or howsoever holding himself out as a director and/or shareholder or in any way interfering with the operations of the plaintiff company. The plaintiff shall have the costs of this application.

DATED and delivered this 4th day of November, 2009.

D. K. MARAGA

JUDGE.