



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

**(MILIMANI COMMERCIAL COURTS)**

**Civil Case 183 of 2009**

**KENYA TEA DEVELOPMENT AGENCY LTD.....PLAINTIFF**

**VERSUS**

**VICTORY TEA BROKERS & OTHERS.....DEFENDANS**

**RULING**

Application dated 29/5/2009 is brought under **Order VI Rule 13** and **Order 1 rule 10(2)** of **Civil Procedure Code** seeking order that the plaintiff's suit be dismissed against 2<sup>nd</sup> defendant with costs. There is also similar application by the 3<sup>rd</sup> defendant.

The grounds stated are that the 2<sup>nd</sup> defendant and 3<sup>rd</sup> defendant are shareholder and directors of first defendant, a corporation, and the suit discloses no cause of action against defendant 2 and is calculated to scandalize and embarrass the defendant and is an abuse of court process. The application is supported by affidavits of the applicants. The first defendant is a limited liability company incorporated and the defence filed by 2<sup>nd</sup> and 3<sup>rd</sup> defendants. The cause of action is pleaded. Under paragraph 8 of the plaint. It does not disclose any cause of action against the two defendants. Also paragraph 10. No particulars of fraud are set out under the **Companies Act Cap 486**. And that he is a shareholder and director. He deems that he made any inducement or representation to the plaintiff while acting as director that can render him personally liable for debts of the first plaintiff.

A similar application is made by the 3<sup>rd</sup> defendant.

I have perused the in the plaint. It is that the contract to sell tea was between plaintiff and the first defendant. The claim for Kshs.73,058,275.79 can only be paid by the first defendant. The principle of law is a stated in the old case of **Solomon versus Solomon & Others** where the House of Lords discussed the legal personality of a corporation and it was held that "*-----the copy was dully formed and registered and was not the mere "alias" or agent or trustee of the vendor and there was no fraud against the creditors .....*"

This judgment has over the years become interpreted as laying the principle that a registered company has separate identity apart from its directors and that the directors can only be liable for liabilities of the company where there is fraud or where they have breached fiduciary duties to the copying in this case.

There is no evidence of fraud or breach of fiduciary duties of directors. The plaintiff's plaint does not show any fraudulent acts of the defendants 2 and 3 and the allegations of misrepresentation and fraud are not supported by particulars.

On these grounds I find the plaint was filed to embarrass the defendants who are prominent personalities minister and the 3<sup>rd</sup> defendant and I order that the two defendants 2 and 3 be discharged from the proceedings.

The costs of this application shall be paid by the plaintiff/respondent.

Orders accordingly.

**Dated, signed and delivered** this 3<sup>rd</sup> day of November, 2009.

**JOYCE N. KHAMINWA**

**JUDGE**