



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE NO. 1343 OF 1997

BALVINDER SINGH SEMBHI.....PLAINTIFF

VERSUS

HARBHAJAN SINGH SEMBHI & ANOTHER.....DEFENDANT

RULING

This is the application by plaintiff for the following orders (in summary).

1.

2.1st and 2nd defendants be restrained from dealing with third defendants two accounts and the two accounts be frozen or alternatively further transactions to the two accounts be carried out with sanctions and written approval of the applicant.

3. Defendants be ordered to pay applicant what applicant deserves as director and shareholder of the 3rd defendant from 1.6.96 until payment in full thereafter to be paid on monthly basis. 4. Defendants do produce to court true statements of amounts containing all dealing of the 3rd defendant and all transactions in respect of the years 1996 and 1997.

5 Defendant be restrained from removing applicant from directorship of the 3rd defendant and/or interfering with the said directorship of the 3rd defendant and /or interfering with the said directorship/shareholding capacity in the 3rd defendant until it's application is heard and determined.

The plaintiff shows that the reliefs sought in the plaintiff includes an injunction in terms of prayer No. 2 in the application above; payment of all monthly salaries and allowances from 1st December, 1996 in terms of prayer 3 in the application; statement of account in terms of prayer No. 4 of the application, injunction in terms of prayer No. 5 in the application until the determination of the suit and a share of dividends and /or profits of the 3rd defendant for the years 1996 and 1997.

The plaintiff and the affidavits show that the first defendant is the father of the plaintiff and the second defendant. The third defendant is a family company in which all the three are the sole shareholders and directors. Plaintiff complains that he has been locked out of the management of the company and denied ingress and salary and that the first defendants have plotted to buy his shares and to remove him as a director of the company. He also complains that he has been denied remuneration for 11 months.

The first defendant was in his replying affidavit given the history of the company (3rd defendant) and the relationship of the father and his two sons. He complains that plaintiff has taken Kshs 500,000 from the company and a further Kshs 200,000 from the customer which he has not accounted for. He states that he has given plaintiff place in the company premises to run a hardware shop which plaintiff runs without paying any rent. It states further that plaintiff has registered a firm which runs the same business as the

third defendant and which is competing with the 3rd defendants business.

He accuses plaintiff of working towards the down fall of the company by refusing to sign cheques and by engaging in competing business and by asking the bank to freeze the company accounts. He explains that the directors have agreed to forgo their remuneration or dividends until the existing overdraft is fully paid and in that method and overdraft has been drastically reduced.

The first thing to note in this dispute is that the prayers sought in the application are the same reliefs sought in the plaint and that if the prayer sought in the application are granted the whole suit will have been determined at an interlocutory stage without trial.

The second thing to note is that there are major disputes in the running of the company between the first and second defendants one hand and the plaintiff on the other hand. There are disputes as whether plaintiff by his acts has been running down the company. There are disputes as to whether or not plaintiff has previously refused to sign company cheques. There are disputes as to whether plaintiff has previously taken money from the company and failed to account for it. There are disputes as to whether or not plaintiff is running a business which competes with the business of the company. There are disputes about the shareholding of the company. There are disputes as to whether or not the directors have resolved to forgo their remuneration and share of dividends in favor of paying the company overdraft. All these and other disputes which cannot be resolved at its interlocutory stage. Certainly, evidence will be required in all aspects of the dispute before the court can find one way or the other. It is difficult at this stage for the court to form a prima facie opinion as to whether plaintiff has established a prima facie case with the possibility of success in respect of each relief sought in the application.

The balance of convenience is in favour of the company being allowed to continue its business. Freezing the company's accounts or restraining the 1st and 2nd defendants from dealing with the accounts will paralyse the operation of the company and eventually grind it to a halt. In that event all the three directors and shareholders will be the losers. If plaintiff has been frustrated he has several options. He can for instance petition for the winding up of the company. Better still, he can sell his shares to the remaining directors after valuation at his own price.

Lastly, if the plaintiff suit succeeds he will be able to get the arrears of his remuneration's and dividends. From the foregoing I conclude that this is not a proper case where the orders sought can be granted at an interlocutory stage without trial.

I dismiss the application with costs to the respondents.

E. M. Githinji

JUDGE

2.3.98

Mr. Mogire present

Mr. Mwangi present