



IN THE COURT OF APPEAL

AT NYERI

(Coram: Gachuhi, Kwach & Shah JJ A)

CIVIL APPEAL NO 136 OF 1995

BETWEEN

M'RUKARIA M'RARIA & 139 OTHERS.....PLAINTIFFS

AND

MWICHUIRI FARMERS COMPANY LIMITEDRESPONDENT

(Appeal from the order of the High Court of Kenya at Nyeri (Lady Justice M A Ang'awa) dated 4th March, 1994, in HC Misc Civil Application No 88 of 1992)

JUDGMENT

On the 4th day of March, 1994, Ang'awa J ordered that 140 plaintiffs do all and each of them answer interrogatories numbered 1, 2, 3, 4, 5 and 6 as sought by the respondent (defendant) annexed to its application dated 7th February, 1994.

It is not in dispute that summons for directions was dealt with before the trial began. At the time the summons for directions was dealt with (so Mr Sichangi for the respondent informed us) the only orders made were per orders 22 and 23 of the summons for directions, that is to say, the Deputy Registrar who dealt with the summons decided the venue of trial and length of trial only. No other points which ought to have been considered were considered at all.

Six witnesses gave evidence before the application for leave to administer interrogatories was filed.

It must be noted that order number 11 in the form for summons for directions (Form No 26, Appendix A to Civil Procedure Rules) specifically deals with the issue of leave to administer interrogatories.

Order 51 of the Civil Procedure Rules specifically provides that it is the duty of the court to consider at the first hearing of a summons for directions all matters which require consideration (rule 3). The Court obviously has to be assisted by counsel in giving all relevant information. See order 51 rule 4(2).

It is unfortunate that the summonses for directions do not appear to be taken seriously by counsel in most cases. Some consider it a nuisance. Some agree by consent to dispense with the requirements of summons for directions.

We must reiterate that the hearing of the summons for directions is the proper time to consider such matters as interrogatories, discovery and inspection although the steps as regards interrogatories may, in appropriate circumstances, be taken even before summons for directions if circumstances so warrant.

But what has happened in this suit is that the superior court proceeded to give leave to administer interrogatories after the trial commenced. That in our view is wrong and amounts to an improper exercise of the judge's discretion in the matter if she had any at the stage of the proceedings.

Be that as it may, the superior court proceeded to grant leave to administer interrogatories most of which could properly only be classified as facts which constitute the plaintiffs' case. It is in our view trite that interrogatories can only be administered, timeously, to obtain specific admissions but not evidence. It is clear from the nature of interrogatories 1, 3 and 4 that the defendant is seeking to obtain in advance, the evidence the plaintiffs have. This is not within the scope of interrogatories.

We come to the so called interrogatories numbered 2, 5 and 6. These do not even appear in the form of questions. Interrogatories must be clear, specific and answerable. The same cannot be of a nature whereby evidence is sought to be obtained. This obviously cannot be allowed.

This appeal is therefore allowed and the leave given to administer interrogatories is set aside. The learned judge had already heard evidence of 6 witnesses before ordering the answering of interrogatories. In the circumstances, we think it prudent to order that there be a trial *de novo* before another judge. It is so ordered. The appellant will have the costs of this appeal.

Dated and delivered at Nyeri this 27th day of October, 1995

J.M GACHUHI

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JUDGE OF APPEAL

R.O KWACH

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JUDGE OF APPEAL

A.B SHAH

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR