



**Kitui Flour Mills Ltd v Madhav Sudhir Bhandarid (Sued as the Administrators
New Generation Self Services Stores Ltd) & another (Commercial Suit
E009 of 2022) [2024] KEHC 10325 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 10325 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
COMMERCIAL SUIT E009 OF 2022
F WANGARI, J
APRIL 22, 2024**

BETWEEN

KITUI FLOUR MILLS LTD PLAINTIFF

AND

**MADHAV SUDHIR BHANDARID (SUED AS THE ADMINISTRATORS NEW
GENERATION SELF SERVICES STORES LTD) 1ST DEFENDANT**

NEW GENERATION SELF SERVICE STORES LTD 2ND DEFENDANT

RULING

1. The Defendant filed an application dated 9/10/2022 seeking the following orders
 - a. The amendments to the Plaint, effected on 29th August 2023, be disallowed in toto.
 - b. The suit against the 1st Defendant be stayed sine die until such time as leave of the High Court, sitting as an Insolvency Court is obtained.
 - c. The costs of this application be borne by the Plaintiff.
2. The application was based on the grounds that the 1st Defendant was under Administration by NCBA Bank and the 2nd Defendant being the Administrator acquires no personal liability for the acts or omissions of the 1st Defendant. The suit is therefore not sustainable in law as leave ought to be granted in the related pending suit in Nairobi Insolvency Notice No E047 of 2022.
3. The supporting affidavit was sworn by the Administrator Madhav Sudhir Bhandari deponing the contents of the application.
4. The Plaintiff/ Respondent filed a Replying Affidavit dated 22/11/2023 sworn by the Anwar Ahmed Abeid, a Manager with the Plaintiff company, deponed that the Respondent via a Notice of Motion



dated 4/7/2022 sought leave to amend the Plaintiff and enjoin the Administrator as the 2nd Defendant. Leave was granted as per the ruling of this court dated 1/8/2023.

5. Parties were directed to file their respective submissions and they both complied. The Defendant/ Applicant filed the submissions dated 10/1/2024 while the Plaintiff/ Respondent filed their submissions dated 13/2/2024.
6. The Applicant submits that leave to have the Administrator be enjoined as a Defendant ought to be granted in an Insolvency cause. In this matter, there is a pending insolvency cause which is still pending determination before the Nairobi High Court.
7. On the other hand, the Respondent submits that leave had already been granted by this court on 1/8/2023 and the amended Plaintiff was properly before court.
8. I have perused through the ruling of this court dated 1/8/2023 which gave leave to have the Plaintiff amend its Plaintiff and enjoin the then interested party (now 2nd Defendant) as a party to the suit.
9. This application seeks to have the amendments to the plaintiff be denied in toto and these proceedings be stayed pending determination of the insolvency suit before the Nairobi High Court.
10. What the Defendant/ Applicant is seeking is to have this court review its orders dated 1/8/2023 or this court to sit on appeal against its own orders. If the Applicant was dissatisfied with the orders of this court, all that was left of them is to file an appeal against the said ruling instead of filing this application at hand.
11. Article 164 (3) of the Constitution of Kenya, 2010 provides as follows;
 3. The Court of Appeal has jurisdiction to hear appeals from-
 - a. The High Court; and
 - b. Any other court or tribunal as prescribed by an Act of Parliament
12. The Applicant if dissatisfied with the court orders dated 1/8/2023, ought to have filed an appeal against the said ruling. The application therefore has got no merits and costs are awarded to the Plaintiff/ Respondent.

Determination

13. From the above, the following orders are hereby issued;
 - a. The Notice of Motion dated 9/10/2023 lacks merit and is hereby dismissed.
 - b. Costs awarded to the Plaintiff/ Respondent.

DATED, SIGNED AND DELIVERED AT MOMBASA ON THIS 22ND DAY OF APRIL, 2024.

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F. WANGARI

JUDGE

In the presence of;

Kongere Advocate for Defendant/ Applicant

M/S Juma Advocate for Plaintiff/ Respondent

Barile, Court Assistant

