

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
HIGH COURT CIVIL CASE NO. xxxx OF 1999

SPORTS LIMITED(IN RECEIVERSHIP) 1ST PLAINTIFF/APPLICANT
SPORTS HOUSE LIMITED 2ND PLAINTIFF/APPLICANT

FFFF 3RD PLAINTIFF/APPLICANT

HHHHH.... .. 4TH PLAINTIFF/APPLICANT

VERSUS

KENYA L BANK
LIMITED.1ST DEFENDANT/RESPONDENT
FINANCE
COMPANY LTD... ..2ND DEFENDANT/RESPONDENT

CHAMBER SUMMONS

(Under Order VIA Rule 3(1), 5(1), 7 and 8 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all other enabling provisions of the law)

LET ALL PARTIES CONCERNED attend the Judge in chambers on the day of 2001 at O'clock in the forenoon or so soon thereafter, for the hearing of an application by the Counsel for the Plaintiff **FOR ORDERS :-**

1. **THAT** the Plaintiffs be allowed to amend their Plaint dated 15th November, 1999 and filed in this Honourable Court on the same date as per the draft annexed hereto.
2. **THAT** the Amended Plaint annexed hereto be treated as the Plaintiffs' Amended Plaint and that the same be deemed as having been duly filed and served.
3. **THAT** the Defendants be at liberty to amend their joint Defence within 14 days thereafter if they so wish.
4. **THAT** the costs of this application be costs in the cause.

WHICH APPLICATION is based on the grounds that :-

1. **THAT** the Plaintiffs' proposed amendments are intended to bring before this Honourable Court, the real matters in controversy between the parties herein so that the same are determined on their true and substantive merits
2. **THAT** the proposed amendments are necessitated by information relevant for the fair and just determination of the real questions in controversy in this suit which came to Plaintiffs' knowledge subsequent to the filing of the Plaint herein, which information includes, *inter alia*, :-
 - a) That the purported Debenture over all the business and assets of the 1st Plaintiff, dated 1st March, 1996, in favour of the 1st Defendant was not duly executed and registered.
 - b) That the purported Charge over property title number L.R. /22 by the 1st Plaintiff in favour of the 1st Defendant, dated 1st March 1996, was not duly executed and registered.
 - c) That the purported fresh or renewed personal guarantees by the 3rd and 4th Plaintiffs in favour of the 1st Defendant were not executed.
3. **THAT** in the circumstances, it is manifest that the purported appointment of Receivers by the 1st Defendant on or about 6th September, 1999 pursuant to the purported Debenture dated 1st March, 1996 was wrongful and unlawful, as a consequence whereof the Plaintiffs have suffered and continue to suffer substantial loss and damage.
4. **THAT** in the interest of justice and fairness therefore, the Plaintiffs should be granted leave to amend their Plaint filed herein so as to include, *inter alia*, a claim for damages, general and special, for the d wrongful and unlawful appointment of Receivers.
5. **THAT** the d action arises out of the same facts or substantially the same facts in respect of which relief is claimed by the Plaintiff in this suit.
6. **THAT** the time allowed under the Civil Procedure Act and the Civil Procedure Rules for amendment of pleadings has since expired.

7. THAT the proposed amendments will not occasion any prejudice to the Defendants.

AND WHICH APPLICATION is grounded on the annexed Affidavit of **FFFF**, and on such other grounds and reasons as may be adduced at the hearing hereof.

DATED at Nairobi this day of 2001

XXXX AND COMPANY
ADVOCATES FOR THE PLAINTIFFS/APPLICANTS

DRAWN AND FILED BY:

Xxxx and Company
Hhhh
Arboretum
P O Box
Nairobi

(Ref.:)

TO BE SERVED UPON:

Xxxx & Company
Advocates
Finance House
Loita Street
P. O. Box xxxx (Ref:)
Nairobi

“ If any party served does not appear at the time and place above-mentioned such order will be made and proceedings taken as the court may think just and expedient.”

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KENYA BANK
LIMITED.1ST DEFENDANT/RESPONDENT
FINANCE COMPANY LTD... .. 2NDDEFENDANT/RESPONDENT

AFFIDAVIT

I, FFFF residing at No. 18 Elite Gardens, Kabarasaran Road Near Kianda College, Westlands and of Post Office Box Number, xxxxx Nairobi do hereby make oath and solemnly state as follows:-

1. **THAT** I am the 3rd Plaintiff herein and a Director of and a shareholder in the 1st and 2nd Plaintiff Companies and I am duly authorised to make this Affidavit on behalf of 1st and 2nd Plaintiffs. I am also duly authorised to make this Affidavit on my own behalf and on behalf of the 4th Plaintiff who is also a director of the 1st and 2nd Plaintiffs.
2. **THAT** I have full knowledge and information concerning this suit and that I am competent to swear this Affidavit.
3. **THAT** subsequent to the filing of this suit, it transpired to the Plaintiffs that certain crucial securities pertaining to the appointment of Receivers over the assets of the 1st Plaintiff, might not have been executed by any of the parties hereto and/or duly registered, as by law required .
4. **THAT** in view of the foregoing, in or about May, 200 the Plaintiffs duly instructed their Advocates on record herein, Messrs. & Company to establish from the Defendant's Advocates' whether the aforesaid documents had indeed been executed and duly registered.

5. THAT acting on the Plaintiffs' instructions, I am duly informed by the Plaintiffs' d Advocates, which information I verily believe to be true that:-

a) On or about 26th May, 2000, the d Advocates prepared, and filed in this Honourable Court, a Notice to Admit Facts, in accordance with the provisions of Order XII Rule 5 of the Civil Procedure Rules, which Notice was duly served upon the Defendants' Advocates on 6th June, 2000.

Annexed hereto and marked as Exhibit "MHR1" is a true copy of the duly filed and served Notice To Admit Facts.

b) That pursuant to the aforesaid provisions of law, the Defendants were required to, within twenty one(21) days from the service of the d Notice, admit or deny the following facts contained in the d Notice:-

- i) That the purported Debenture over all the business and assets of the 1st Plaintiff, dated 1st March, 1996, in favour of the 1st Defendant was not duly executed and registered.
 - ii) That the purported Charge over property title number L.R. /22 by the 1st Plaintiff in favour of the 1st Defendant, dated 1st March 1996, was not duly executed and registered.
 - iii) That the purported fresh or renewed personal guarantees by the 3rd and 4th Plaintiffs in favour of the 1st Defendant were not executed.
- c) That the Defendants did not within the time prescribed and have to date, not responded, in any manner whatsoever, to the d Notice To Admit Facts..
- d) That in the circumstances, the Defendants are deemed to have admitted the facts contained in the d Notice to Admit Facts unless this Honourable Court otherwise orders.

6. **THAT** in view of the foregoing, and in particular, failure by the Defendants to in any manner whatsoever, challenge the facts contained in the d Notice to Admit Facts, I verily believe that :-
- a) That the purported Debenture over all the business and assets of the 1st Plaintiff, dated 1st March, 1996, in favour of the 1st Defendant was not duly executed and registered.
 - b) That the purported Charge over property title number L.R. /22 by the 1st Plaintiff in favour of the 1st Defendant, dated 1st March 1996, was not duly executed and registered.
 - c) That the purported fresh or renewed personal guarantees by the 3rd and 4th Plaintiffs in favour of the 1st Defendant were not executed.
7. **THAT** in the circumstances, it is manifest that the appointment of Receivers by the 1st Defendant on or about 6th September, 1999 over the 1st Plaintiff's assets, pursuant to the purported Debenture dated 1st March, 1996 was wrongful and unlawful, as a consequence whereof, the Plaintiffs have suffered substantial loss and damage.
8. **THAT** it is therefore necessary for the Plaint herein to be amended so as to include a claim for, inter alia, damages, both general and special, for the wrongful and unlawful appointment of Receivers over the 1st Plaintiff's property as aforesaid as per the annexed draft annexed hereto and marked "MHR2" .
9. **THAT** the proposed amendments are further necessitated by the fact that the aforesaid information which is relevant for the fair and just determination of the real questions in controversy in this suit, only came to the Plaintiffs' knowledge subsequent to the filing of Plaint.
10. **THAT** the proposed amendments arise out of the same facts or substantially the same facts in respect of which relief is claimed by the Plaintiff in this suit.
11. **THAT** I am duly advised by my Advocates on record herein, Messrs. Xxxx & Company and which advice I verily believe to be true that the time allowed under the Civil Procedure Act and the Civil Procedure Rules for amendment of pleadings has since expired.

12. **THAT** in all the circumstances of this case and for the ends of justice in this case to be met, the orders sought in the application to amend the Applicant's Defence herein in support whereof I swear this Affidavit, ought to be granted.

13. **THAT** what is deponed hereinabove is true to the best of my knowledge in accordance with my firm's records on this case save as to matters deponed to on information sources whereof have been disclosed and matters deponed to on belief grounds whereupon have been given.

SWORN at Nairobi)

this day of 2001)

by the d **MOHAMED HUSSEIN**)

RAHEMTULLA)

)

BEFORE ME)

)

COMMISSIONER FOR OATHS)

DRAWN AND FILED BY:

Xxxx and Company

Hhhhh

Arboretum

P O Box xxxxx

Nairobi

(Ref.:)

TO BE SERVED UPON:

Xxxx & Company

Advocates

Finance House

Loita Street

P. O. Box xxxxx

Nairobi

(Ref:)