**National Social Security Fund Board of Trustee v Kerio Farms Limited and**

**others**

**Division:** Milimani Commercial Courts of Kenya at Nairobi

**Date of judgment:** 7 November 2005

**Case Number:** 162/05

**Before:** Ochieng J

**Sourced by:** LawAfrica

**Summarised by:** E Ongoya

*[1] Civil practice and procedure – Discovery – Delivery of interrogatories – Applicable principles.*

**Editor’s Summary**

By application made under Order X, rules 1, 2, 7 and 20 of the Civil Procedure Rules, the applicants

(first and second defendants) sought leave to deliver interrogatories to the plaintiff. The applicants contended that the interrogatories were necessary for the fair disposal of the suit and to help determine the real issues in controversy.

**Held** – By virtue of the provisions of Order X, rule 11A(1) of the Civil Procedure Rules within one month after the pleadings are closed in a suit in the High Court, every party shall make discovery by filing and serving on the opposite party a list of documents relating to any matter in question in the suit which are not or have been in his possession or power. In the process of presenting interrogatories, the party interrogating may put questions for the purpose of extracting from his opponent information as to the facts material to the questions between them which he has to prove on any issue raised, between them, or for the purposes of securing admission as to those facts in order that the expense and delay may be saved, or to find out whether particular statements of fact contained in the pleadings of the party interrogating as to which onus of proof is upon him are true or untrue, or to ascertain what case he has to meet or what really is in issue, so as to prevent his being taken by surprise at the trial, or to destroy his opponent’s case, or to support his own case – *Omar v*

*Gordhanbhai and another* [1974] EA 518 adopted.

**Case referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Omar v*