



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CORAM: D. S. MAJANJA J.

CIVIL CASE NO. 31 OF 2016

BETWEEN

DAYKIO PLANTATIONS LIMITED PLAINTIFF

AND

GALBA MINING LIMITED1ST DEFENDANT

PURPLE SATURN PROPERTIES LIMITED 2ND DEFENDANT

KOFINAF COMPANY LIMITED 3RD DEFENDANT

RULING

1. I am called upon to adjudicate upon two applications filed by the plaintiff (“Daykio”). The first one is a Notice of Motion dated 24th February 2017 filed by the plaintiff. It is made, inter alia, under **Order 1 rule 10** and **Order 8 rule 3** of the *Civil Procedure Rules*. The plaintiff seeks to join 18 defendants to the suit and consequently amend the plaint to include the following 18 proposed defendants: Nahashon Ngige Nyagah, Jeremy Nyaga Njeru, Judy Wanjiku Ngugi, Job Peter Lenoseuri, Henry Ogada Obande, Jane Muthoni Njanja, Monica Muthoni Magu, Erastus Karanja Kibiro, Jane Wambui Gacoka, Samuel Ojoro Malaki, Jared Omondi Obor, Susan Wairimu, Faith Joan Wanjiru, Sabina Njoki Wanyoike, Nara Company Limited, Solomon Kioko Kivuva, Nelson Havi, Osundwa Sakwa Purple Saturn Properties Limited, the Registrar of Companies and Lucas Akunga Omariba.

2. The second application filed by the plaintiff is a Notice of Motion dated 12th January 2018 which seeks to consolidate this suit and the other suits namely; **HCCC No. 230 of 2015 (Kofinaf Company Limited v Nahashon Ngige Nyagah & Others)**, **HCCC No. 237 of 2015 (Kofinaf Company Limited v Nahashon Ngige Nyagah & Others)** and **HCCC No. 238 of 2015 (Kofinaf Company Limited v Nahashon Ngige Nyagah & Others)** and **HCCC No. 499 of 2016 (Purple Saturn Properties Limited & Anor v Anjarwalla & Khanna Advocates & Others)**.

3. As a result of an order made on 26th July 2018 in **HCCC No. 238 of 2015**, Tuiyott J., ordered consolidation of that case with **HCCC No. 237 of 2015** and **HCCC No. 230 of 2015**. The only issue is whether I should now consolidate those cases with **HCCC No. 499 of 2016** and the present case, **HCCC No. 31 of 2016**.

4. As regards this case, **HCCC No. 31 of 2016**, Daykio seeks to enforce the terms of a Share Purchase Agreement dated 10th December 2014 entered between it and Galba Mining Limited (“Galba”) which sold to it 1000 shares in Purple Saturn Properties Limited (“Purple Saturn”) for Kshs. 4,095,000,000/=. The sale included purchase of a parcel of land; LR No. 11288 measuring 1183 acres.

5. In the other pending suits, **HCCC No. 230 of 2015**, **HCCC No. 237 of 2015** and **HCCC No. 238 of 2015**, Kofinaf contends that it is the beneficial owner of shares of the several companies including Galba and Purple Saturn. It claims that certain individuals including some of the proposed defendants fraudulently and in breach of trust executed transfer of shares which resulted in transfer of the properties held by those companies. Clearly, the success or failure of Daykio’s suit depends on the finding regarding the ownership of shares in the suits filed by Kofinaf.

6. In **HCCC. No. 499 of 2016**, Purple Saturn and Jojoga Properties Limited have, inter alia, sought to have a Share Purchase Agreement involving Daykio declared null and void and a restraining order against interference with its shareholding, directorship and its property. The issue of the shareholding implicates Kofinaf which claims that it is the beneficial owner of the shares in those companies.

7. The basis of all these suits is the claim by Kofinaf that it is the beneficial owner of certain companies it incorporated to hold the properties in contention. It claims that some of the 18 proposed defendants, who were nominated shareholders and directors, to hold shares on its behalf, breached their trust and transferred the shares to third parties in fraudulent transactions. The 18 proposed defendants include the original nominee shareholders and directors, the subsequent directors and persons who it alleged procured and facilitated the fraudulent transfer of those shares. The 18 proposed defendants are already parties to the other cases.

8. Having examined each of the cases, I find that there is a commonality of factual issues including the parties and allegations of breach of trust and fraud and the consequences thereof. I am satisfied that it is the interests of justice to consolidate the suits for convenience and to save the court's and parties time and expense of trying the suits separately.

9. As regards the application for amendment and joinder, I hold that since Daykio dealt with a Company when it entered the Share Purchase Agreement, I do not see the utility of joining the 18 proposed defendants who it did not deal with and who are, in any case, parties to the other cases sought to be consolidated with this case.

10. I dismiss the application dated 24th February 2017 and allow the Notice of Motion dated 12th January 2018. In the result, I order consolidation of **HCCC No. 31 of 2016** and **HCCC No. 499 of 2016** with **HCCC No. 230 of 2015**, **HCCC No. 237 of 2015** and **HCCC No. 238 of 2015**. Costs shall be in the cause.

11. I now invite the parties to take pre-trial directions.

DATED and DELIVERED at NAIROBI this 27th day of JANUARY, 2020.

D. S. MAJANJA

JUDGE

Mr Gatonye instructed by Waweru Gatonye and Company for the Plaintiff.

Mr Rene instructed Havi and Company for the 2nd defendant.

Mr Odhiambo, Advocate for the Registrar of Companies.