



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

COMMERCIAL & TAX DIVISION

MILIMANI LAW COURTS

HCCC NO. 1766 OF 2000

ALCON HOLDINGS LIMITED.....APPLICANT

VERSUS

KENYA COMMERCIAL BANK LIMITED..... RESPONDENT

AND

ALKA ROSHANLAL HARBANSLAL SHARMA.....INTERESTED PARTY

RULING

1. The Notice of Motion of 7th February 2019 to join Alka Roshanlal Harbanslal Sharma (Alka) as an interested party comes at the tail of these proceedings.
2. Alka seeks to join the proceedings in view of the consent dated 8th November 2017 entered between the parties herein. The consent reads:-

CONSENT

The parties herein agree as follows:-

1. The property known as Land Reference Number 12467 (the suit property) will be sold subject to and under the supervision of this Honourable Court.
2. The Plaintiff agrees to remit to the Defendant the sum total of Kenya Shillings Ninety Million (90,000,000/=) from the proceeds of the Sale (hereinafter the said sum) in full and final settlement of the claims in Civil Suit Number 1766 of 2000 and Civil Suit Number 735 of 2003 and with regard to the charge dated 16th October 1995 over the suit property upon execution of the proposed sale agreement.
3. The said sum will be paid immediately upon execution of the proposed sale agreement but not later than one (1) month hereof.
4. The title documents will thereafter be discharged and released to the Plaintiff.
5. Upon the payment of the said sum this suit together with suit Number 735 of 2003 be marked as settled.
6. This matter be mentioned after two (2) months from the date hereof to confirm the settlement.

Dated at Nairobi this 8th day of November 2017

IBRAHIM, ISAACK & COMPANY

ADVOCATES FOR THE PLAINTIFF

RACHIER & AMOLLO

ADVOCATES FOR THE DEFENDANT

3. Alka avers that she is the owner of 334 out of 1000 shares in the Plaintiff Company. She complains that she has not been kept abreast in the proposed sale of the property of the Company and this not only prejudices her but also the Plaintiff Company itself. She asserts that she has a right, as a substantial shareholder in the Plaintiff Company, to be heard by the Court on the manner of sale of the property including marketing, valuation and advertisement.

4. The Plaintiff Company opposes the application and states that the only shareholders to the Company are Davinder Hanspal Singh and Inderjit Hanspal Singh with 667 and 333 shares respectively. It also avers that Alka had filed suit No. 328 of 2015 Alka Roshanlal Harbanslal Sharma –vs- Alcon Holdings Limited, Davinder Singh Hanspal, Manjit Kent and Inderjit Singh Hanspal in which she challenges the transfer of shares from her late husband Kultar Singh Hanspal to Davinder Singh Hanspal. The Court is told that the suit is pending and yet to be heard and determined.

5. The Bank, too, opposes the joinder.

6. The Court has considered the positions of the parties herein and the submissions of the interested party as the other parties do not seem to have filed submissions.

7. The law on the joinder of an interested party to proceedings is not controversial and the Court of Appeal in J M K v M W M & another [2015] Eklr said as follows:-

“Order 1 Rule (10) (2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or suo motu, to order the name of a person who ought to have been joined or whose presence before the court is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the suit, to be added as a party. Commenting on this provision, the learned authors of Sarkar’s Code of Civil Procedure (11th Ed. Reprint, 2011, Vol. 1 P. 887), state that:

“The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties.”

8. To be noted is that the dispute between the Plaintiff and Defendant herein has been compromised by the Consent of 8th November 2017 (See paragraph 2 of this Ruling). Alka does not challenge the said consent. She neither seeks its setting aside or variation. Indeed, in paragraph 16 of her affidavit she confirms that she has no objection to the contents of the consent.

9. It is clear to this Court that there is a dispute involving Alka and Davinder Hanspal Singh and Inderjit Hanspal Singh in respect to the shareholding in the Company. Unlike what Alka asserts, the records by the Registrar of Companies as to the shareholders of the Plaintiff Company as at 8th April 2019 shows that Alka was not registered as a shareholder of the said company. She has not demonstrated that the position has since changed. Alka’s case is that she is a shareholder by virtue of being the beneficiary of the shares in the estate of Kultar Singh Hanspal. In Civil Suit 328 of 2018 she alleges that Kultar Singh Hanspal was forced to transfer his shares to Davinder Singh Hanspal. Davinder on the other hand avers that the transfer was done freely.

10. The dispute is already the subject of litigation in Civil 328 of 2018 and it would be unjust to vex the Bank with a dispute in which it is not involved. These proceedings should not be used to resolve a collateral dispute which is already properly before another Court. Joining Alka into these proceedings does not assist the effectual and complete adjudication of the matters in this suit which have, in any event, been compromised by the consent of 8th November 2017. The side dispute as to shareholding will only serve to detract the conclusion of this matter.

11. It is not for this Court to advise any party as to what action to take but it is quite clear that Alka has other avenues in which she can address her grievance. That said, the options do not include joinder into these proceedings.

12. The Notice of Motion of 7th February 2019 is dismissed with costs.

Dated, Signed and Delivered in Court at Nairobi this 13th Day of March 2020

F. TUIYOTT

JUDGE

PRESENT:

Roble for Athuok for Plaintiff

No appearance for the Interested Party

No appearance for the Defendant