



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

APPELLATE SIDE

(Coram: Odunga, J)

CIVIL APPEAL NO. 98 OF 2016

T.S.S TRANSPORTERS LTD.....1ST APPELLANT

KENYA GRANGE VEHICLE INDUSTRIES....2ND APPELLANT

HUSSEIN DAIRY TRANSPORTERS LTD.....3RD APPELLANT

-VERSUS-

PAMELA AKINYI LIDAMBIZA.....RESPONDENT

(Being an Appeal from the Judgment and Decree of the Honourable J.M Nangea, Chief Magistrate delivered on the 1st day of July, 2016)

=IN=

REPUBLIC OF KENYA

IN THE CHIEF MAGISTRATE'S COURT AT MOMBASA

CIVIL SUIT NO.1035 OF 2013

PAMELA AKINYI LIDAMBIZA.....PLAINTIFF

-VERSUS-

T.S.S TRANSPORTERS LTD.....1ST DEFENDANT

KENYA GRANGE VEHICLE INDUSTRIES....2ND DEFENDANT

HUSSEIN DAIRY TRANSPORTERS LTD.....3RD DEFENDANT

DEVELOPMENT BANK OF KENYA.....4TH DEFENDANT

RULING/DIRECTIONS

1. This appeal was cause listed before me on 10th December, 2018 as a visiting Judge for hearing.

2. When the matter was called out, **Mr Ngaira**, Learned Counsel for the Respondent informed me that there were two appeals arising from the judgement sought to be appealed from being HCCA No. 97 and HCCA No. 98 both of 2016 which were consolidated and that the parties filed submissions therein. However since in his view, the appellant's submissions were well elaborated he did not which to highlight the same and sought a judgement date.

3. This position seemed to have found favour with **Mr Jengo**, Learned Counsel for the Appellant who did not express any contrary views.
4. Based on the aforesaid submissions, I scheduled the delivery of the judgement to 20th December, 2018.
5. However when I retired to write the judgement, I found that the only file that was placed before me was in respect of HCCA No. 98 of 2016 in which the appellants, according to the title of the Respondent's Submissions, are expressed to be **TSS Transporters Limited, Kenya Grange Vehicle Industries and Hussein Transporters Limited**. The Respondent in the said appeal is **Pamella Akinyi Lidambiza**. In the proceedings appealed from the Plaintiff was **Pamella Akinyi Lidambiza** while the Defendants were **TSS Transporters Limited, Kenya Grange Vehicle Industries, Hussein Transporters Limited and Development Bank Limited**.
6. According to the submissions filed by the Respondent herein, in HCCA No. 98 of 2016, **Hussein Dairy Transporters Limited** is the Appellant while **Pamella Akinyi Lidambiza, TSS Transporters Limited and Kenya Grange Vehicle Industries** are the Respondents. On the other hand in HCCA No. 97 of 2016 the appellants are **TSS Transporters Limited and Kenya Grange Vehicle Industries** while the Respondent is **Pamella Akinyi Lidambiza**. This position is confirmed by the submissions filed on behalf of the appellant in HCCA No. 98 of 2016. While in HCCA No. 97 of 2016 the appeal is directed against quantum, HCCA No. 98 of 2016 is directed against both quantum and liability. Nowhere is it mentioned in the submissions that the two appeals were consolidated. In fact at the conclusion of the submissions, the Court is urged to dismiss both appeals with costs.
7. As for the appellant's submissions in HCCA No. 98 of 2016, it seems that the same are only with respect to the appeal filed by **Hussein Dairy Transporters Ltd**. Similarly there is no mention that the two matters were consolidated.
8. I have gone through these proceedings and I have not seen anywhere where it is indicated that the two appeals were ever consolidated. In this case while there are two records of appeals bearing the same number, 98 of 2016 by different parties: **TSS Transporters Limited, Kenya Grange Vehicle Industries and Hussein Transporters Limited vs Pamella Akinyi Lidambiza** on the one hand and **Hussein Transporters Limited vs Pamella Akinyi Lidambiza, TSS Transporters Limited, Kenya Grange Vehicle Industries and Development Bank of Kenya** on the other hand, filed by different firms of advocates: Kairu & McCourt Advocates and Jengo Associates Advocates respectively, the only submissions filed on behalf of the appellants are those filed by Jengo Associates Advocates for and on behalf of **Hussein Transporters Limited**.
9. In the absence of the record for HCCA No. 97 of 2016, the order consolidating the two appeals, the position of legal representation in both appeals and whether the submissions have been filed for and on behalf of all the appellants, I was unable to proceed with the preparation of the judgement.
10. However, before penning off, I wish to deal with the issue of consolidation. In **Hilton Walter Nabongo Osinya & Another vs. Savings & Loan (K) Limited & Another Nairobi HCCC NO. 274 of 1998 Ringera, J** (as he then was) held that:
- “The whole point of consolidating suits is to enable common questions of law and facts to be tried together in the same forum with a view to saving judicial time and avoiding the possibility of conflicting decisions on the same issues by different courts. A consolidated trial of two actions results in one common decree and there is no question of abandoning any of the suits.”**
11. As was appreciated by **Kneller, J** (as he then was) in **Stumberg & Another vs. Potgieter [1970] EA 323**:
- “Where there are common questions of law or fact in actions having sufficient importance in the proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time consolidation should be ordered.”**
12. Therefore consolidation of suits is a case management tool and as held by **Kuloba, J** in **Machira T/A Machira & Co Advocates vs. East African Standard (No 2) [2002] KLR 63**:
- “This means that whatever is done...it must as far as is practicable, be to ensure that the parties fight it out on level ground on equal footing, *attempt to minimise and save costs*, ensure expeditious and fair disposal of the case in hand, allotting to every case an appropriate share of judicial resources as account is taken of the need to allot those resources to other cases...”** [Emphasis mine].
13. This was the position adopted by the Court of Appeal in **David Ojwang Okebe & 11 Others vs. South Nyanza Sugar Company Limited & 2 others [2009] eKLR**, where it was stated that:
- “The main object of consolidation is to save costs and time by avoiding a multiplicity of proceedings covering largely the same ground. Thus, where it appears to the court that there are common questions of law or fact; that the right to relief is in respect of the same transaction or series of transactions; or that for some other reason, it was desirable to make an order for consolidation of one or more cases, then the court will do so and such was the case in the present matter where it is evident that the court of first instance acceded to the parties' request that one of the 11 cases be tried as a test case on liability and that the result would apply to all the other cases. Eleven decisions then ensued from that court on the issue of quantum of damages and consequently 11 appeals were filed before the Superior Court. For similar reasons, the Superior Court made an order for consolidation of the appeals and only issued one judgement thereon which was stated to apply to all consolidated appeals. In the court's view, the objective of consolidation order would be defeated if separate appeals were filed.”**
14. I therefore agree with the holding in **Law Society of Kenya vs. Centre for Human Rights & Democracy & 12 Others [2014] eKLR**,

where the Supreme Court stated:

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties.”

15. In my view, the effect of the consolidation of suits wholly as opposed to partially is to give rise to only one decision. Therefore in consolidating suits, the Court ought to direct which of the various suits would be the lead file and in which matter proceedings would be undertaken. Further there ought to be a re-assignment of the position to be taken by the parties, if necessary, in the consolidated suit. Lastly, the order consolidating the suits should be reflected in all the affected files.

16. However suits may be consolidated for limited purposes only. For example suits may be consolidated for the purposes of determining liability or a common question of fact or law. In that event once the issue is resolved, the individual suits may proceed in accordance with the determination made in the consolidated suit.

17. Having so said, there is no evidence before me that HCCA No. 97 and 98 both of 2016 were consolidated. It is however my view that that ought to have been the appropriate mode of proceeding in the said causes.

18. Accordingly I direct that both files be placed before the Court for appropriate orders or directions on a date to be agreed by the parties.

19. Those shall be the orders of this Court.

Read, signed and delivered in open Court at Mombasa this 20th day of December, 2018.

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Ngaira for the Respondent

CA Lavender