



REPUBLIC OF KENYA
IN THE HIGH OF KENYA AT MOMBASA

CIVIL CASE NO. 192 OF 2014

NARODHCO (K) LIMITED.....PLANTIFF

VERSUS

MISS JAHANARA GULAMMUSTAFA MUSA1st DEFENDANT

JAMAL ABDULKARIM MUSA.....2nd DEFENDANT

JAMAL ABDULKARIM MUSA VARAVANI

t/a TAANZYM STORES3rd DEFENDANT

R U L I N G

1 The plaintiff sued the 1st and 2nd and 3rd defendants as proprietors of a firm called Taanzam Stores. The plaintiff's claim of Ksh 61,332,081.15 and Ksh 28,807,412 relate goods supplied to the said defendants between the years 2009 and 2010.

2 The 1st defendant by paragraph 3 of the defence filed on behalf of all the defendants pleaded:

Paragraph 2 is denied. The defendants aver that Jahanara Gulammustafa Mohamed ceased to be a director or partner of Taanzym Stores in January, 2009 and was not involved in any capacity with the operations of Taanzym stores when the goods in question were allegedly supplied to Taanzym stores.

3 Further to the above defence the 1st defendant by chamber summons dated 4th March 2015 seeks the dismissal of this suit against her on the ground that there is mis-joinder. It is premised on the same issue raised in the defence that she ceased being a partner of partnership of Taanzama stores in January 2009 yet that the goods which are the subject of this suit were ordered in June 2009. Apart from the pleading in her defence and the deposition in her affidavit in support of the application there is no evidence presented before court to show that 1st defendant resigned from the partnership. What 1st defendant annexed to her affidavit as her evidence of her assertion that she resigned from the partnership is a certificate of Registration of change of particulars filed with the registrar of companies on 4th February 2010. What that certificate shows is that Jamal Abdulkarim Musa was proprietor of Taanzym stores. That does not advance the 1st defendant's argument at all.

4 It is important to note that the plaintiff claims the goods were supplied to the defendants

between the years 2009 and 2010. Since the 1st defendant's exhibit, the certificate of change was filed with registrar of on 4th February 2010, the 1st defendant's plea that she was not in the partnership does 'hold water'.

5 With the above in mind it is important to remind the 1st defendant that order 1 Rule 9 of the Civil Procedure Rules provides that a suit shall not be defeated by mis-joinder or non-joinder.

6 Further there cannot be said to be mis-joinder when there is a cause of action against the 1st defendant. This is what the learned and author Stuart Sime stated in his book a Practical Approach to Civil Procedure, Viz:

“Apart from the operation of the overriding objective, the only restriction against joinder of parties appears to be that there must be a cause of action against each of the parties joined.”

I believe I have said enough to show that there is a cause of action against the 1st defendant.

7 **The 1st defendant's chamber summons dated 4th March 2015 is misconceived and is hereby dismissed with costs to the plaintiff. It is so ordered.**

Dated and delivered at Mombasa this 24th day of August 2015

MARY KASANGO

JUDGE

24.8.2015

Coram

Before Justice Mary Kasango

C/Assistant –

For: Plaintiff:

For Defendants:

Court

The judgment is delivered in their presence/absence in open court.

MARY KASANGO

JUDGE