



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

COMMERCIAL & ADMIRALTY DIVISION

MISC. APPL. NO. 121 OF 2015

PAVAL PROPERTIES LTD.....1ST PLAINTIFF/APPLICANT

BELTWAY ENTERPRISES LTD.....2ND PLAINTIFF/APPLICANT

DUALWAY PROPERTIES LTD.....2ND PLAINTIFF/APPLICANT

VERSUS

THINDIGUA COMPANY LIMITED.....RESPONDENT/APPLICANT

R U L I N G

INTRODUCTION

1. The **Notice of Motion** before the court dated **27th February 2015** and is brought by the Plaintiffs. The application seeks to secure the following orders, namely:-
 1. *That Nairobi CMCCC No. 8053 of 2010 – Paval Properties Limited & 2 others – Vs – Kenya Power & Lighting Company Limited be transferred from Chief Magistrate’s court Milimani Commercial Court to the High Court of Kenya Milimani Law courts for hearing and disposal.*
 2. *That a separate trial be held in respective of each Plaintiff in this suit.*
 3. *That leave be granted to the Plaintiffs to amend the Plaintiff filed herein and dated 16th December 2010 as in the annexed copy of the draft amended Plaintiff.*
 4. *That the said amended Plaintiff be deemed as filed and served.*
 5. *That the costs of this application be provided for.*
2. The application is premised on the grounds set out therein and is supported by affidavit of **Wahito Tumuti** sworn on **27th February 2015** and its annexures. The Applicant submitted that though the Plaintiffs are legally related a separation of their claims will expedite the hearing as they are distinct despite the same arising out of the same cause of action. The facts leading to the cause of action are also different and require different witnesses. Further it was submitted that even if the claim is separated into the three claims by each Plaintiff, two of the claims will be beyond the pecuniary jurisdiction of the subordinate court individually hence the need to transfer the suit to this court. Thirdly, the Applicants need leave to amend the Plaintiff to factor in the pecuniary loss occasioned to them by the action of the Defendant on their suit properties. The extent of the said loss only came to Applicant’s realisation when a valuation was done on the properties after filing of the suit hence the loss occasioned to their properties had not been quantified hence the need of

leave to amend the Plaint to include this part of the prayers the Plaintiffs are seeking from the court.

3. The application is opposed. The Respondent filed Grounds of Opposition on 27th April 2015 and states that the application goes against the overriding objective of expeditious and affordable resolution of court disputes. The Respondent submitted that the application has been brought after inordinate delay, and is fatally defective as the evidence in support contradicts the prayers as sought. The Respondent submitted that the application is riddled with amorphous prayers and is an abuse of court process. The application goes against the principle of aiding a negligent pleader, and should be struck out with costs to the Defendant.
4. I have considered the application and submissions of the parties. The following are the issues I raise for determination:-
 1. ***Whether CMCC No. 8503 of 2010 can be transferred to this court.***
 2. ***Whether the court can order separate trials of the Plaintiff's suits.***
 3. ***Whether leave to amend Plaint can be issued.***
5. To begin with the first issue, it must be noted that parties can only file suits in courts with applicable monetary jurisdiction. The reason a party goes to court is to claim what a party believes is due to the party. If, after going to court, a party finds that his claim is beyond the jurisdiction of a particular court, it is in order to apply to move to a higher court, provided this is done in plenty of time. I have noted that the matter in the lower court has not proceeded to hearing. It is in order, since the Defendant is not likely to suffer any prejudice, to allow the matter to move to this court. The Plaintiff has annexed valuation reports of the suit property which shows that the value of the suit property has now exceeded the monetary jurisdiction of the said lower court.
6. On whether the Plaintiffs can file separate suits, it is my view that no good grounds have been given to warrant the same. The cause of action appears to have arisen from the same transaction. Separating the matter will only delay their finalisation while visiting greater costs on the Defendants whose witnesses will most likely be the same people. Again, if the parties chose to file their suit together in the lower court, there is no reason given as to why they should separate when they move to the High Court. Accordingly, the answer to issue number two raised herein is in the negative.
7. The last issue is whether the court can allow amendment of the Plaint. The law is that amendment of pleadings can be allowed by court at any time upon such conditions as the court shall give, if any, and that leave to amend would not be unduly denied unless there is serious delay which is likely to prejudice the opposing party. In this matter, save that the suit was filed in 2010, and there is a delay of five (5) years, there is no evidence that amendment of Plaint will prejudice the Defendant. The decision to allow amendment is discretionary, and I exercise herewith that discretion in favour of the Applicant. I have noted that the draft amended Plaint does not take into account the different claims of the Plaintiffs. I herewith order the Plaintiffs to bring clear amendments pointing out each Plaintiff's claim within the same suit.
8. In the upshot, the Plaintiff's Notice of Motion application dated 27th February 2015 is allowed in the following terms:-
 - a. ***That the Nairobi CMCC No. 8053/2010 is hereby transferred to this court for hearing and determination.***
 - b. ***The Plaintiffs are given the leave to amend, file and serve their Plaint within 10 days from the date hereof.***
 - c. ***The Defendant shall file its amended defence, if need be, within 10 days of service of the amended Plaint.***
 - d. ***Costs of this application shall be for the Defendant/Respondent.***

Orders accordingly.

READ, DELIVERED AND DATED AT NAIROBI

THIS 23RD DAY OF OCTOBER 2015

E. K. O. OGOLA

JUDGE

PRESENT:

M/s Mathenge holding brief for Swahito for the Plaintiff/Applicant

Mr. Wilson for the Respondent/Applicant

Teresia – Court Clerk