



REPUBLIC OF KENYA

High Court at Nairobi (Milimani Commercial Courts)

Civil Suit 342 of 2012

KASSAM KHIMJI LIMITED.....PLAINTIFF

-VERSUS-

MERIDIAN PROPERTIES LIMITED.....DEFENDANT

RULING

1. This is a Ruling on the Chamber Summons application dated 2nd October 2012. It is brought under Order 1 Rule 10(1), Order 8 Rule 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The application seeks for orders that:-

1) The Honourable Court be pleased to order the consolidation of the following suits:

a. **HCCC NO. 757 of 1994; KASSAM KHIMJI LIMITED VERSUS MERIDIAN PROPERTIES LIMITED, now HCCC NO. 342 OF 2012 KASSAM KHIMJI LIMITED VERSUS MERIDIAN PROPERTIES LIMITED and**

b. **HCCC NO. 603 OF 2006 KASSAM KHIMJI LIMITED VERSUS MERIDIAN PROPERTIES LIMITED.**

2) **HCCC NO. 757 OF 1994, now 342 OF 2012** be adopted as the principal file.

3) In the result the two (2) suits be heard together.

4) Leave be granted to amend the Complaint dated 23rd February 1994 and substitute the name of the Plaintiff from **KASSAM KHIMJI LIMITED** to **MEDINA CORPORATION COMPANY LIMITED.**

5) The Costs of this application be in the cause.

2. The application is based on the grounds stated on the face of the application and is supported by the annexed affidavit of **SULTAN KHIMJI** sworn on **2nd October 2012.**

3. The application is opposed vide the grounds of opposition filed by the Defendant on 19th November 2012.

4. The application was canvassed before me on 20th November 2012 with Mr. Kanjama appearing for the Plaintiff and Mr. Momanyi appearing for the Defendant.

5. The Plaintiff's case for consolidation is that the suits raise similar questions of fact and law and all

revolve around the same set of facts, that is, a dispute over the dealing with shares of the Defendant in which the Plaintiff holds a twenty per cent shareholding.

6. In opposing the application, it is contended on behalf of the Defendant that there are no similarities of facts or causes of action or law between HCCC. 342 of 2012 and HCCC 603 of 2006. It is further contended that the only similarity between the two suits are the parties and nothing else. It is the Defendant's case that consolidation of the two suits will only convolute the suit and will not aid the speedy disposal of the said suits. It is also the Defendant's case that the orders sought in both suits are distinct and different and the outcome of one suit will in no way affect the outcome of the other suit.

7. I have considered the application herein, the grounds of opposition as well as the oral submissions by both counsels. Having done so, I take the following view of the matter.

8. I will commence with the prayer for amendment of the Plaint dated 23rd February 1994 to substitute the name of the Plaintiff from **KASSAM KHIMJI LIMITED** to **MEDINA CORPORATION COMPANY LIMITED**. The defendant has not opposed the same for obvious reasons. Without further ado, the prayer for leave to amend the plaint is apt and the same is granted.

9. Now, on to the main issue which is the consolidation of HCCC. 342 of 2012 and HCCC 603 of 2006. It is obvious and the same has not been disputed that the parties in both suits are similar. The defendant's argument is that there are no similarities of facts and causes of action or law. I have perused the Plaints instituting the respective suits. The one dated 23rd February 1994 and filed in Court on the same day as well as the Plaint dated 29th September 2006 and filed in Court on 3rd November 2006. Having perused the relevant Plaints I do find that in both suits the dispute revolves around the dealing with shares of the Defendant in which the Plaintiff holds a twenty per cent shareholding. In both suits the Plaintiff is protecting his interests with regard to the shares he holds with the defendant company. In the circumstances, i see no prejudice in consolidating the two suits.

10. In the upshot, the Plaintiff's Chamber Summons application dated 2nd October 2012 is hereby allowed. The costs of the application shall be in the cause.

It is so ordered.

DATED, READ AND DELIVERED AT NAIROBI

THIS 6TH DAY OF FEBRUARY 2013

E.K.O OGOLA

JUDGE

PRESENT

N/A for Plaintiff

Nyaosi for Defendant

Teresia- court clerk