



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
HC MISC. APPLICATION NO. 178 OF 2013

JAMES OMARE OINO..... APPLICANT

VERSUS

1. TOKINORI KONO
2. KOJA MOTORS LIMITED
3. KOONS MOTORS LIMITED
4. ADASIM AGENCIES LIMITED.....RESPONDENTS

R U L I N G

1. The application by **notice of motion dated 28th February 2013** seeks three main orders -

(i) Withdrawal of **Mombasa CMCC No. 2009 of 2011** (Adasim Agencies Limited – vs – Koons Motors Limited) and **Mombasa CMCC No. 2010 of 2011** (Adasim Agencies Limited – vs – Koons Motors Limited) from the Chief Magistrates’ Court and transfer of the same to the High Court, Nairobi for trial and disposal.

(ii) If that order is granted, then consolidation of the two suits and with **Nairobi HCCC No. 268 of 2011** (Tokinori Kono & 2 Others –vs- James Omare Oino) pending before this court for trial and disposal together.

(iii) That the three suits do proceed to trial from where they had reached.

2. The application has been made by **James Omare Oino**, the defendant in Nairobi HCCC No. 268 of 2011. He has sworn an affidavit in support to which he has annexed the complaints in the three suits, among other documents. He has also sworn a supplementary affidavit filed on 20th March 2013.

3. The plaintiff in the two Mombasa cases (**Adasim Agencies Limited**) has opposed the application by replying affidavit filed on 19th April 2013 which is sworn by a director of the company.

4. **Tokinori Kono**, the first plaintiff in Nairobi HCCC No. 268 of 2011, has also opposed the application by grounds of opposition dated and filed on 16th May 2013. No other party has filed any papers in response to the application.

5. I have considered the submissions of the learned counsels made at the hearing of the application on 11th July 2013. I have also perused the complaints in the three suits. No statements of defence have been

exhibited.

6. I had occasion to deal with a preliminary objection raised by the defendants in Nairobi HCCC No. 268 of 2011. In a **ruling dated and delivered on 16th March 2012** I observed that the suit was primarily a dispute between the first plaintiff (Tokinori Kono) and the first defendant (James Omare Oino) over the **management** of the second and third plaintiffs (**Koja Motors Limited and Koons Motors Limited**) of which they were the only directors and shareholders.

7. I also observed that the Articles of Association of the two companies (Koja Motors Limited and Koons Motors Limited) had arbitration clauses, and that the dispute was likely to be referred to arbitration in terms of the arbitration clauses.

8. On the other hand, the Mombasa cases, CMCC No 2009 of 2011 and CMCC No. 2010 of 2011, **seek to enforce simple contracts for sale and purchase** of motor vehicles. The two suits are between Adasim Agencies Limited (as plaintiff in both) and Koons Motors Limited and Koja Motors Limited (each the defendant in one or the other suit).

9. I do not find the **same or similar questions of law or fact** in Nairobi HCCC No. 268 of 2011 and the two Mombasa cases. The issues in the High Court case are totally different from the simple contractual issues in the Mombasa cases, notwithstanding that the motor vehicles the subject-matter of the Mombasa suits may be some of the very many motor vehicles mentioned in the plaint in Nairobi HCCC No. 268 of 2011. Consolidation of the three suits, rather than achieve expediency, would actually hinder the just, expeditious, proportionate and affordable resolution of the cases (**section 1A** of the **Civil Procedure Act, Cap 21**).

10. The notice of motion dated 28th February 2013 is entirely without merit. It is hereby dismissed with costs to the Respondents. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF OCTOBER 2013

H. P. G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 25TH DAY OF OCTOBER 2013