



1. MOMBASA BRICKS & TILES LIMITED

2. SOJPAL JETHA LIMITED

3. DINESH KUMAR ZAVERCHAND JETHA

4. THE ESTATE OF ZAVERCHAND

JETHA.....PLAINTIFFS

VERSUS

1. ARVIND SHAH

2. HARSHABEN SHAH

3. GOSRANI HOLDINGS LIMITED

4. COAST PROPERTIES

LTD.....DEFENDANTS

Coram:

Mwera J.

Ndegwa, Mogaka, Kiarie for Plaintiffs

Kinyua for Defendants

Court Clerk Furaha

RULING

The plaintiffs in this case filed a notice of motion dated 2nd May, 2012 with two prayers:

(i) that a total of six causes: HCCC 2, 21, 22, 23, 24 all of 2009 together with MISC Application No. 4/2009 be consolidated with HCCC 9/11 for final hearing and determination;

(ii) that parties be at liberty to amend their pleadings.

The names of the parties in each case are well known all round and so need not be specifically stated here. The details of why these causes ought to be consolidated were contained in the affidavits filed and by submissions, arguments and presentations made by the four counsel who appeared in the proceeding. What transpired or was garnered from the affidavits and the arguments was that the individual parties herein were either relatives or got together via business links emanating from the existence and the two assets of the 1st plaintiff, Mombasa Bricks & Tiles Limited. The broader aspect of the cause of action was that the 1st plaintiff owned a plot of land known as subdivision No. 500/VI/MN on which stood or stands a brick-making plant. That at one point when this company was undergoing financial crisis, the 1st defendant (Arvind) advised it to divide the 1st plaintiff's assets among some five limited liability companies - plaintiffs in causes 2, 21, 22, 23 and 24 of 2009 while the defendant himself

together with the 2nd defendant company (Gosrani Holdings Limited) also took shares of the 1st plaintiff, allegedly without paying for them, hence the tussle has arisen as to the ownership of the two assets of the 1st plaintiff. That tussle has translated in the suits herein.

While the plaintiffs in this and other related suits represented by Mr. Ndegwa, Mr. Mogaka and Mr. Kiarie were for consolidation of all the suits as set out above, Mr. Kinyua for the defendants was of a contrary view. And that precipitated the affidavits, submissions and other arguments both on facts and law either in support or against consolidation. On the points of law Order 11 and 3 (h) Civil Procedure Rules and section 6 of Civil Procedure Act prominently featured. While those for consolidation argued that this court had jurisdiction to order consolidation and that that would save time and money, the opposing side posited that the intricacies and complexities involved did not warrant consolidation. Arguments were heard even on the necessity to strike out some suits for one reason or the other. But at the end of the day both sides agreed that the points of law and fact, the subject matter (the two assets), the likely witnesses to be called would be similar/same. So were the issues.

The court then posed a question to the effect that: Would the parties not agree to have one case among all these heard so as to act as a test case, whose outcome would impact/resolve issues in the rest of the cases? And to this there seemed to be a general agreement with minor reservations here and there e.g. as to existing interim orders in some of the suits, etc. May it be noted that the foregoing represents a very condensed version of the submissions heard by this court. The affidavits contained much longer details and the oral highlighting heard over two days, even much more. However, at the end of day the court was minded to invoke the powers donated by section 6 of the Civil Procedure Act in the circumstances of this case. That section has in its marginal notes:

“Stay of suit.”

It reads:

“6. No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they are or any of them claim litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

In our present circumstances the other suits involved were instituted before HCCC 9/11 where this application was filed and proceedings were recorded. But no matter. As alluded to above, the court after hearing counsel was left with the impression that one of those cases holds the proceedings all the way to the end. Accordingly, it is directed that all the parties involved may adjust their positions, amend pleadings if that be necessary, formulate issues and have the dispute said to be similar in all the suits, determined in HCCC 9/11. It is however, added that the rest of the causes will be stayed, hopefully to be resolved by the outcome in HCCC 9/11. Any existing orders in all or any of these suits will remain as made/given.

In sum, instead of consolidation of the suits, there will be proceedings in HCCC 9/11 while the rest remain in abeyance. The parties to do the needful accordingly in regard to adjusting parties, pleadings and issues so that on a mention thirty (30) days hence, they will have filed/exchanged witness statements, bundles of paginated documents and issues ready to take directions as to the hearing dates.

Orders accordingly, costs to be in the cause.

Delivered on 26th July, 2012.

J. W. MWERA

JUDGE