



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL & TAX DIVISION – MILIMANI

Civil Case 686 of 2008

KASSAM KHIMJI LTD.....PLAINTIFF
VERSUS
MERIDIAN HOLDINGS LTD.....1ST DEFENDANT
EQUATORIAL SECRETARIES & REGISTRARS.....2ND DEFENDANT

AKBARALI KARIM KURJI
SADRUDIN KARIM KURJI
(Directors & Shareholders of Meridian Holdings Ltd).....3RD DEFENDANT

RULING

The parties filed separate application at the beginning of December 2008. The Defendant filed Notice of Motion dated 1/12/2008 seeking orders:

- (1) That interim order granted on 20/11/08 be discharged.
- (2) That the current suit be stayed pending determination of some previous suits.
- (3) Alternatively the current suit be struck out as it is an abuse of court process
- (4) Defendants costs.

The Plaintiff's application Notice of Motion seeks orders:

- (1) a restraining injunction to prohibit any dealings with the share capital of the first Defendant pending hearing of this suit.
- (2) A mandatory injunction to compel the defendants to issue 40,000 shares as per rights issue of 2006 to the Plaintiff.
- (3) Any other order that may favour the course of justice.
- (4) Plaintiff's costs.

On the issue whether interim injunction should be granted to the Plaintiff prohibitory and mandatory is sought on the basis that the Defendants had passed a resolution in a general meeting held on 7/11/2008 intending to increase the first Defendant's share capital from Sh. 6 million to shs. 10,000,000 and that such action would be prejudicial to Plaintiff's property and statutory rights in the Company. The Plaintiff was to be allocated 40,000 shares which rights allocation was being held in abeyance by the defendants without any legal reason purely at the behest of a third party not involved with the parties. The Plaintiff would be denied its entitlement to residuary management control of the company and minority protection. The Plaintiff would suffer irreparable damage since the affairs of the company were run in a manner prejudicial to its interests.

The balance of convenience favours the making of status quo prior to the hearing of the application. The Defendant opposes the issue of injunction claiming that it is prejudicial and abuse of court process on account of previous suits dealing with related matters especially HCC No. 757 of 1994 between the Plaintiff and third party and HCC No. 603 of 2006 between Plaintiff and 1st Defendant and HCC 2852 of 1992 between Plaintiff and first Defendant and third party. It is submitted that the matters were granted without full disclosure of material facts mainly that there was no disclosure of previous suits. HCC No. 603 of 2006 and 3896 of 1993. Because the Plaintiff irregularly convened a meeting to increase capital, Plaintiff filed suit No. 3896/1993 against majority shareholders the first Defendant and Company Secretary seeking a declaration that the extra ordinary general meeting and the resolution increasing share capital were irregular an injunction was granted restraining the Defendants from increasing the share capital or making any allotment of shares. The said injunction is still in force pending application in that suit in December 2000 and May 2001 Meridian Properties Ltd disposed off its entire shareholding in Meridian Holdings Ltd (first Defendant) and ceased to have any interest in running the first Defendant. Plaintiff remained with its 20% SK 2 shares transfer forms now the third Defendant are Directors and shareholders of first Defendant. Then third party

violated the joint agreement and mutual expectation of the Plaintiff and Meridian Properties Ltd for joint management of the first Defendant affairs by removing the Plaintiff's nominee on the first Defendant's board of directors namely himself. The 3rd Defendant was appointed as Company Secretary Plaintiff was interested with affairs of the first Defendant being a holder of 20% shares.

Regarding Application dated 1/12/2008 court stopped 4 shareholders from taking up rights issue of 1st Defendant's shares. 3 shareholders cannot be prevented by one shareholder from enjoying their property. The court has no cause to interfere without a full hearing. One shareholder is not a party - Raison Holdings Ltd. The injunction issued ought to be set aside.

The Plaintiff is an abuse of court process. See paragraph 14 of plaint where only 3 other suits are disclosed. See also paragraph 19 the Plaintiff's director has admitted on oath that the other suits are touching on related issues and are distinct cause of Action distinct and separately related to previous cause of action. The Plaintiff has obtained injunction in HCC No 603/2006 injunction ordered on 20/11/2008 is an offshoot of HCC 603/2006 this application has been withdrawn. The Plaintiff repeatedly files suits seeking to chance on injunctive orders. This suit should be stayed.

The authorities relied upon are as listed in the filed list where the court ordered stay of some of the suits. There are clearly several suits filed by the Plaintiff against the defendants. The defendants rely on HCC No 586 of 2002 Jacinta Amuti vs Savings and Loan (K) Ltd and HCC Asea Brown Ltd vs Bawazir Glassworks Ltd & Another.

Furthermore the Plaintiff is guilty of nondisclosure of all suits he has filed against the Defendants.

I have considered the arguments and affidavits filed by the parties. It is clear that the Plaintiff is guilty of non disclosure of all previous litigation which had taken place and are still pending between the two parties. In the circumstances of this kind of litigation justice demands hearing all parties and not exparte.

In the circumstances of application dated 1/12/2001 I grant prayer one. Order granted on 20/11/08 is hereby discharged and this suit is hereby stayed pending hearing and determination of all other pending suits between the same parties. I do not make order in the alternative prayer.

Regarding application dated 20/11/2009 by the Plaintiff issues raised by the Plaintiff on the issue of whether interim injunction is justified is answered by showing that a resolution was passed in a general meeting of 7/11/2008 to increase share capital from 6 Million to 10 Million and the injunction would affect the interest of 3 shareholders over the interest of one person the plaintiff. There was no disclosure of material facts.

I have considered the arguments and find interlocutory injunction is not to be confirmed and the current suit is to be stayed pending the hearing and determination of the other suit.

The upshot is that I grant orders of stay of this suit pending hearing and determination of earlier suits.

(2) The injunctive order granted is set aside.

(3) Each party to bear its own costs.

Dated and delivered at Nairobi this 25th day of October 2010.

J. N. KHAMINWA
JUDGE