



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Civil Case 162 of 2005

RAO JAIVISINTHINJI & 3 OTHERS.....PLAINTIFF

VERSUS

PRUDENTIAL DRY CLEANERS.....DEFENDANT

RULING

This is a fairly old matter having initially been instituted in Nairobi in 1997. The main suit is yet to be set down for hearing. Before me is an application brought way back on 25th June, 2004 by the defendant in the suit (now referred to as the applicant). The applicant seeks

“*ORDERS:-*

- 1. that the joinder of the plaintiffs will embarrass and delay the trial of the suit*
- 2. that each plaintiff brings his separate suit for separate trial*
- 3. that costs of this application be provided for.”*

The application is premised on the grounds: that the plaintiffs entered into separate tenancy agreements with different terms with the defendant at different time and paying different rents; that the claim (alleged damage suffered), if true took place at different places and at different times; that it is fair and just to have the matters tried separately to avoid embarrassment and prejudice to the applicant.

The respondent did not respond to this application but their counsel submitting from the bar that the plaintiff has complied with order 1 rule 1 of the Civil Procedure Rules; that there was only one transaction involving all the plaintiffs; that the plaintiffs’ claims raise similar questions of law. He also submitted that issues of joinder of parties must be raised at the earliest stage possible. I have considered these arguments as well as the authorities cited.

I have already observed that this suit was filed twelve years ago. The respondents who were tenants of the applicant have averred that the applicant and/or its agents unlawfully and maliciously destroyed their properties while purporting to evict them. They have sought in the plaint a perpetual injunction against the applicant from unlawfully evicting them or interfering with their business premises. They have also sought special damages and a declaration that the applicant’s conduct was unlawful and it is therefore liable to pay exemplary and punitive damages to the respondent.

The rules governing joinder of parties as stipulated in Order 1 rule 1 of the Civil Procedure Rules may be stated as follows in so far as joining of plaintiffs is concerned-

- i) the relief sought must arise out of the same act or transaction
- ii) there must be a common question of law or fact
- iii) where a joinder of plaintiffs is likely to embarrass or delay the trial, separate trials may be ordered or the court may make such other order as may be expedient

The first two conditions are indeed the foundation for joinder of plaintiffs in one suit. So that several persons may join as plaintiffs in one suit, though their causes of action are separate and distinct so long as the first two conditions are fulfilled. The two conditions are cumulative and not alternative.

In terms of rule 13, an application to add or strike out or substitute a plaintiff or defendant may be made at any time before trial or even at the trial of the suit. The claims by the three respondents arose on the same day (on 5th April, 1997) at the same time (9.30am). The eviction and damage were allegedly done to them by the applicant. Similar points of law are likely to emerge as I have stated. The circumstances in which the liability of the applicant and the claim by the respondent arose are also similar. There will be no embarrassment to the applicant and no delay will be occasioned.

There will be no embarrassment to the applicant as each respondent has stated the particulars of special damages suffered and indeed the applicant has not encountered any difficulty in responding to the plaint as is clearly shown in the statement of defence. After nearly twelve (12) years to ask the respondents (or some of them) to institute fresh claims against the applicant would be unconscionable.

In the result I find no merit in the application. It is hereby dismissed with costs to the respondents.

Dated, Signed and Delivered at Nakuru this 16th day of October, 2009.

W. OUKO

JUDGE