



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT ELDORET
Civil Case 148 of 2007

CRUSH SECURITY GUARDS & PRIVATE INVESTIGATIONS LIMITED.....PLAINTIFF

VERSUS

KENYA POWER & LIGHTING CO. LTD.DEFENDANT

RULING

This is an application by the Defendant under the provisions of Order VI, Rules 13 (1) (d) and Order VII Rule 1 (1) e and Rule 10 that the Plaintiff's suit be struck out for being an abuse of the court process.

The grounds are that;-

- (a) The orders sought in this suit are the same as in Nairobi HCCC. No. 388 of 2007 between the same parties and Eldoret HCCC. No. 108 of 2007 which suit was struck out for duplicity.
- (b) The verifying affidavit is false as there is another similar matter pending between the parties herein at time of institution of the suit.
- (c) The suit is bad for duplicity as the same was filed after Nairobi HCCC. No. 388 of 2007 over the same cause of action.
- (d) It is fair and expedient that this application be allowed.

The Plaintiff's counsel was served with the application on 5th December, 2007. The counsel did not appear at the hearing. There is no Replying Affidavit or grounds of opposition on record. It is therefore deemed that the application is unopposed.

However, I have also considered the merits. From the evidence on record I am satisfied that when the plaintiff filed this suit on 25th May, 2007, there was pending Nairobi HCCC. No. 388 of 2007 which had been filed on 27th April, 2007. The parties are the same and so is the subject matter and issues.

He subsequently filed a third suit against the Defendant on 12th June, 2007 namely HCCC. No. 108 of 2007 in Kisumu. The parties are the same and so are the subject matter and issues. This last suit was struck out by Hon. Justice Kaburu Bauni on the grounds that the verifying affidavit did not disclose that there was a pending suit between the parties i.e. Nairobi HCCC. No. 388 of 2007.

It is clear that the Plaintiff filed these cases one after the other in Nairobi, Kisumu and Eldoret. The first case in Eldoret has been struck out. This case was filed in Kisumu but was transferred to Eldoret for disposal since the cause of action arose in Eldoret and/or in Kakamega.

I do find that the plaintiff swore a false affidavit in that there was a pending suit between him and the Defendant when he filed this case in Kisumu. The plaintiff has abused the due process of the court by deliberately and with some ulterior motive filing three (3) suits against the Defendant across the country. The motive was clearly to steal a march on the Defendant and/or to vex it with multiplicity of suits. He has not come to this court with clean hands. Such a litigant ought not to get any sympathy from the courts of law whose process he has abused.

The plaintiff is a vexatious litigant who has made the Defendant incur unnecessary legal costs across the country. This court must therefore deter him from being a nuisance and liability to other court users who seek justice humbly and honestly.

I therefore do hereby strike out the plaint dated 25th May, 2007 with costs to the Defendant. The Plaintiff shall also pay the costs of this application.

The plaintiff is hereby barred from filing any suit against the Defendant at the High Court Registry at Eldoret until he has fully paid the all the costs in this suit.

Orders accordingly.

Dated and delivered at Eldoret on this 23rd day of January, 2008.

MOHAMMED IBRAHIM

JUDGE