



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Suit 47 of 2008

JOHN KUNGU KIARIE.....PLAINTIFF

VERSUS

DYER AND BLAIR INVESTMENT BANK LIMITED.....1ST DEFENDANT

STANBIC BANK KENYA LIMITED.....2ND DEFENDANT

R U L I N G

This is a Chamber Summons application brought by one SHAILESH RAJANI seeking to be enjoined as an interested party to the suit. The application is brought under Order 1 rule 13 of the Civil Procedure Rules. The grounds of the application are on the face of the application and are as follows:

- a) **That the interested party is directly and materially interested and/or affected by the suit monies and ought therefore be enjoined in the subject suit.**
- b) **That the interested party was a Director of companies which had outstanding and underperforming loans with Kenya Commercial Bank Limited and the Kshs.67.5 million subject of this suit was paid by the interested party and cleared for and on behalf of Kenya Commercial Bank Limited through the Plaintiff herein, then a senior employee of the Bank.**
- c) **That the interested party was the complainant in Nairobi Criminal Case No. 1218 of 2003 against the Plaintiff herein involving the Kshs.67.5 million which rightfully belonged to the interested party.**
- d) **That there is a close nexus between the matters raised in the instant suit and the interested parties claim herein thus necessitating the allowing of this application ex debito justitiae.**

It is supported by the affidavit of the Applicant. The Defendants have not opposed this application but the Plaintiff has raised serious opposition of the same, first on a technical point that the jurisdiction of the court has not been invoked since order I rule 13 which the Defendant relies on does not apply. Even though I agree with that point, I do not think that I should shut out the Applicant purely on a technicality.

The second ground raised by the Plaintiff is that the Applicant has not shown what interest he has in the suit and therefore the application should not be allowed.

I have considered the submissions by Mr. Nyaga for the Applicant and the grounds on the application and in the supporting affidavit of the Applicant. It is clear from this that the basis upon which the Applicant

seeks to be joined as an interested party to the suit is the fact that he was a complainant in a **criminal case No. 1218 of 2003** in which the Plaintiff was the accused person. The Applicant avers that the subject matter of that criminal case was the sum of 67.5 million, which is also the subject matter of the suit as pleaded in paragraphs 5, 7 and 8 of the plaint, and that the money rightly belongs to him.

I have had occasion to peruse the pleadings. Under paragraph 7 of the plaint, the plaintiff avers that on or about 12th October, 2007 pursuant to a court order in **Criminal case No. 1218 of 2003** on the Plaintiff's request, the first Defendant facilitated with the 2nd Defendant the release of the sum of Kshs.67.5 million to the Plaintiff. In the 1st Defendant's defence in answer to paragraph 7 of the plaint, the 1st Defendant avers that it released the sum of Kshs.67.5 million to the Plaintiff pursuant to a consent court order in the stated criminal case. These two paragraphs in the plaint and in the first Defendant's defence contradict the Applicant's ground No. (b) on the face of the application and paragraph 4 of the supporting affidavit. Since the Plaintiff and the 1st Defendant are in agreement that the money in the sum of Kshs. 67.5 million was released to the Plaintiff in this suit as rightfully belonging to him, and since the same was done through a consent order recorded in the criminal case which the Applicant has cited in his application, I find that the evidence before the court excludes him from any interest in the matter.

A party seeking to be enjoined in a suit must demonstrate that he is a necessary and proper party and that his presence is necessary to enable the court to effectively and completely adjudicate on the matter and to settle all the questions in the suit and that the ultimate order or decree of the court cannot be enforced without his participation in the proceedings. What the Applicant has demonstrated is that he was a complainant in a criminal case in which Kshs.67.5 million was the subject matter and which was eventually released to the Plaintiff. If at all the Applicant has any case, he should file a suit against the Plaintiff and or any other parties he feels are necessary to enforce his claim. The case before the court is a claim for investment returns of investment made by the Plaintiff with the 1st Defendant and banked with the 2nd Defendant bank. That claim has nothing to with the Applicant's claim. If the Applicant is interested in pursuing the money he is claiming to be his, the proper action he should take is to file a suit to claim that money as a substantive party.

Having come to the conclusion I have of this application, I find that it has no merit and therefore dismiss it accordingly with costs.

Dated at Nairobi this 24th day of October, 2008.

LESIIT, J.

JUDGE

Read, signed and delivered in presence of:-

N/A for the Applicant

Mr. Agwara holding brief Mr. Otieno for the Respondent

LESIIT, J.

JUDGE