



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 425 of 2005

HAKIZIMANA FELIX :::::::::::::::::::::::::::::::::::::::PLAINTIFF

VERSUS

KENYA POWER & LIGHTING CO. LTD ::::::::::::::: DEFENDANT

RULING

The Plaintiff/Applicant has come to this Court under Order XI Rule 1 & 2 seeking consolidation of this suit with a subsequent suit No. HCCC No.441/05. The common ground is that both suits relate to the estate of one KUBWIMANA PHILIP. This current suit was filed by one administrator who has described himself as a brother of the deceased and has brought that action on behalf of himself as a brother and other brothers and sister of the deceased.

The action in HCCC No. 441/05 was filed by another administrator who has described herself as the wife of the deceased bringing that action on her own behalf and on behalf of her minor sons.

The Court has been informed that each Plaintiff rushed to Court to beat the limitation period. Now that that has been done the two administrators recognizes the common ground on which the suits are based and have given their advocates consent to go ahead and consolidate the matters for speedy disposal. A consent to that effect has been annexed as annexure BSI.

Further that the law allows consolidation of such action and this court should go ahead and grant that order.

The defence agree that indeed the two suits have a common ground but are not in favour of consolidation.

Their stand is that :-

- The second suit, is untenable and it should be discontinued instead and the current one amended to incorporate the claims in the other suit.

On the courts assessment of the facts of this application it is clear that indeed the two suits have common ground. The two plaintiffs have now recognized each other as administrators. Although it has not come out clearly in the deponements it may very well have been that at the initial stage there was a problem of

representation and that is why each party went its own way. This court takes Judicial notice of the fact that being a family matter chances of there having been disagreements on representations cannot be ruled out.

Now that the parties are agreeable to move the matter together there is no justification for denying them that opportunity. This Court takes judicial notice of the fact that rules of procedure are put in place to be used as vehicles of justice by litigants. At no time should they be used as bottle necks or corks in the wheels of justice.

It is agreed that Jurisdiction to consolidate is available to this court. Amendment is another way of dealing with the matter. This court has weighed the two options and finds that in a situation where the judiciary is bloated with backlog of cases advising parties to opt out for an amendment would delay the disposal of the matter unnecessarily. It has taken almost one year to have this application disposed off. Putting in another application for amendment would put the matter on hold for at least a year or so. The Court is of the opinion that the better option is the consolidation.

Indeed the defendant is an innocent victim. The court recognizes this fact and that is why there is provision for costs which the applicant is willing to give and no special justification exists for turning down that offer.

Courts exist as referees or umpires and where parties have expressed a wish on how to proceed with their matters as in this case, there is no need for the court to rule otherwise.

It is therefore the finding of this court that justice and speedy disposal of this matter demands that an order for consolidation be made. The Defendant will be compensated for by way of costs.

1. Prayer(1) of the application dated 23.5.2006 and filed on 23.5.2006 be and is hereby allowed.
2. The defendant will have costs of the application
3. Proceedings will be conducted in HCCC NO. 425 of 2005

DATED READ AND DELIVERED AT NAIROBI THIS 9TH DAY OF MARCH 2007.

R. NAMBUYE

JUDGE