



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)
Civil Suit 644 of 2005

KENYA AKIBA MICRO-FINANCE LIMITED.....PLAINTIFF

VERSUS

EZEKIEL CHEBII MOSES GITUMA1ST DEFENDANT

MOSES GITUMA.....2ND DEFENDANT

CHIEF INSPECTOR JOSEPH YEGON.....3RD DEFENDANT

CHIEF INSPECTOR BERNARD BARASA.....4TH DEFENDANT

INSPECTOR CHARLES NJOGU.....5TH DEFENDANT

INSPECTOR MATHEW BETT.....6TH DEFENDANT

INSPECTOR DUNCAN MACHARIA.....7TH DEFENDANT

INSPECTOR GRACE NDIRANGU.....8TH DEFENDANT

INSPECTOR PETER NG'ANG'A.....9TH DEFENDANT

SENIOR SERGENT JOHN MWANGI.....10TH DEFENDANT

CORPORAL DAVID YEGON.....11TH DEFENDANT

POLICE CONSTABLE FELIX ODUOR.....12TH DEFENDANT

POLICE CONSTABLE PHILEMON LANGAT.....13TH DEFENDANT

CENTRAL BANK OF KENYA.....14TH DEFENDANT

THE ATTORNEY GENERAL (on behalf of the BANKING FRAUD

INVESTIGATION UNIT DEPARTMENT OF POLICE.....15TH DEFENDANT

AND

PATRICK KANAI MIRACHO.....1ST INTERESTED PARTY
EDWARD JAMES WAMETHI.....2ND INTERESTED PARTY
PETERSON KAMAU MURITU.....3RD INTERESTED PARTY
PATRICK KARIUKI KIGURU.....4TH INTERESTED PARTY
PAUL WANYOIKE.....5TH INTERESTED PARTY
STEPHENE KIARIE NJENGA.....6TH INTERESTED PARTY
ANDREW KEVOGA MUYAGA.....7TH INTERESTED PARTY
JOSEPHINE WANJIRU MUNGAI.....8TH INTERESTED PARTY
STEPHEN NGANGA WAWERU.....9TH INTERESTED PARTY

R U L I N G

The application is a chamber summons dated 14th march, 2007. It is brought under Order 1, rule 13 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. It seeks in pertinent:-

- (1) That this Hon. court be pleased to enjoin the Applicants Patrick Kanai Miracho, Edward James Wamethi Kimachia and Peterson Kamau Muritu as interested parties in this suit.**
- (2) That costs be provided for.**

The application is based on the following grounds:-

- a) The Applicants have a claim against the Plaintiff herein arising from the same cause or related to the issues subject for determination in this suit.**
- b) The Applicants claim from the Plaintiff is included in the Plaintiff claim from the Defendants.**
- c) Unless the Applicants are enjoined as interested parties in this suit they shall not have capacity to follow/and participate in the proceedings herein from which they shall be directly affected by the outcome.**
- d) The Applicants' money from the Plaintiff is still due and owing.**

The application is supported by affidavits sworn by the three Applicants to this application. In brief each of the Applicants in their respective affidavits sworn in support of the application are that they had paid certain amounts of monies in order to qualify for loan facility from the plaintiff. They have annexed receipts in support of the claim. They averred that before the transaction could be completed the Plaintiff's premises were raided by the Defendants effectively making it impossible for the said parties to transact. They also aver that the monies paid to the Plaintiff is still outstanding.

This application was served on the Plaintiff and Defendants but despite service the application was not opposed.

Mr. Gachie argued this application on behalf of the Applicants. It was counsel's submission that the instant suit was a claim for money. Mr. Gachie submitted that the Defendants in the suit closed down the Plaintiff's bank in November, 2005 and that the 14th Defendant froze all accounts held by the Plaintiff

bank using the 1st to 13th Defendants. Counsel submitted that his clients and the Applicants in the instant suit had a claim against the Plaintiff and that should the Plaintiff succeed in its claim, then the Applicants could also recover their monies only if they were enjoined in the suit.

The issue before me is whether the Applicants have a claim against the Plaintiff in the main suit which arises from the same cause or related to the issues for determination in the suit. The plaintiff has sued the Central Bank of Kenya the 14th Defendant and the Attorney General for and on behalf of the Commissioner of Police and Banking Fraud Investigations Department, the 15th Defendant and others acting on their instructions i.e. the 1st to 13th Defendants, for closing down its offices and ceasing all the documents and equipments from it, chasing away employees and customers of the Plaintiff and as a consequence causing massive loss and damage. The Plaintiff claims that the acts of the Defendants were malicious wanton, callous and illegal as the Plaintiff was carrying out a legal business complete with all relevant licences.

The Applicants have deponed that they have an interest in the current suit on the basis they had paid some monies as precondition to obtain loans from the Plaintiff's company before its offices were shut down by the Defendants. I note from the plaint paragraph 9B that there are approximately 6,000 persons in the Republic of Kenya in a position similar to that of the Applicants herein. Potentially they too could make a similar application to be enjoined in this suit as interested parties. The question is whether the Applicants before court have an interest in the current suit to warrant this court allow their application to be joined as interested parties.

The Plaintiff's claim against the Defendants lies in tort and seeks damages for injury and loss suffered by it due to the acts of the Defendants.

The Applicants on the other hand, if at all they have any claim against the Plaintiff, such claim lies in contract. The Applicants' claim against the Plaintiff is totally different from the Plaintiff's claim against the Defendants. I fail to see what role the Applicants can play in the Plaintiff's claim against the Defendant. Nor do I see how the Applicants' claim in the Plaintiff is included in the Plaintiff's claim against the Defendants nor how their interest can be secured with the Applicants being enjoined in the suit as interested parties.

I do find and hold that whatever interest the Applicants may have in the Plaintiff is distinct from the Plaintiff's claim against the Defendants. Each Applicants' claim is also in my view distinct. The Applicants remedy would be in filing suits against the Plaintiff for their claims against him.

The position would of course have been different had the Applicants herein obtained decrees against the Plaintiffs only then could it be said that they have an interest in the outcome of the Plaintiff's suit against the Defendants and only then would it be necessary to secure their interest by enjoining them in the current suit.

As the matter now stands, the Applicants' interest or any claim they may have against the Plaintiff is uncertain. In the circumstances I hold the view that they have no interest in the Plaintiff's suit and therefore they ought not to be enjoined in this suit.

I find the application lacks in merit and therefore dismiss it with no order as to costs.

Dated at Nairobi this 25th day of May, 2007.

LESIT, J.

JUDGE

Read, signed and delivered in presence of:-

Gachie for Applicant.

Makori for Ougo for Respondent.

LESITT, J.

JUDGE