



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
(MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION)
CIVIL CASE 620 OF 2005

STANBIC BANK KENYA LIMITED PLAINTIFF

V E R S U S

KENYA AKIBA MICROFINANCE LIMITEDDEFENDANT

R U L I N G

This is an *ex parte* application (by chamber summons dated 6th March, 2007) by the Defendant for leave to serve a third party notice upon the Central Bank of Kenya. It is brought under Order 1, rule 14 of the Civil Procedure Rules (the Rules). Under that rule, where a defendant claims as against any other person not already a party to the suit in the circumstances set out in the rule, he may, with the leave of the court, issue a third party notice to that effect to such other person.

In the present case, the Defendant claims that the Central Bank of Kenya, through its officers, illegally raided the Defendant's business premises at Lonrho House (Nairobi), Kitengela, Ongata Rongai and Voi Town, and that in the course of the said raids the files and tools of trade of the Defendant (including computers and accessories, customers' files, original title deeds, certificates of lease, motor vehicle log books and other security documents, banking and financial records, company seal and rubber stamps and tax records), were seized, carried away and detained, thereby closing its business.

The Defendant further claims that the Central Bank of Kenya then unlawfully closed or froze the Defendants' bank accounts held at Stanbic Bank (Mama Ngina Street branch), Kenya Commercial Bank (City Centre branch) and all other accounts of the Defendant and its branches; and that because of the illegal acts of the Central Bank of Kenya, the normal business operations of the Defendant could not continue, and it was unable to follow up and recover huge sums of money borrowed by its customers. Further, that the Defendant was unable to complete its contractual obligations to other parties.

Finally, the Defendant claims that the Central Bank of Kenya has failed to appoint a statutory manager, or such other person, to deal with the Defendant's customer claims pending its decision on the re-opening or winding-up of the Defendant. The Defendant therefore contends that the Central Bank of Kenya should be held liable for the entire Defendants' **“un-performed contracts and claims, including the present one, that arose after the illegal closure”**.

On the other hand, the Plaintiff's claim against the Defendant is the sum of KShs. 3,731,429/22, the

same being the amount said to be overdrawn by the Defendant upon its bank accounts with the Plaintiff plus interest accrued. The Defendant filed defence denying the claim. It pleaded that if it overdrawed its account (which it denied), it has repaid in full such overdrawn amount. It also accused the Plaintiff of being in breach of the agreement between them. Nowhere in the defence is it claimed that the Defendant has been unable to meet its obligations to the Plaintiff because of the actions of the Central Bank Kenya.

The court will grant leave to a defendant to issue a third party notice only where the defendant claims:-

“(a) that he is entitled to contribution or indemnity; or

(b) that he is entitled to any relief or remedy relating to or connected with the original subject-matter of the suit and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) that any question or issue relating to or connected with the said subject-matter is substantially the same question or issue arising between the plaintiff and the defendant and should properly be determined, not only as between the plaintiff and the defendant, but as between the plaintiff and defendant and the third party, or between any or either of them”

See sub-rule (1) of rule 14 aforesaid.

I am not persuaded at all that the Defendant's claims against the Central Bank of Kenya fall under any of the three categories listed above. The Defendant is not claiming any contribution or indemnity from the Central Bank of Kenya. Its claims are not related to the original subject-matter of the suit; nor are they substantially the same as the relief claimed by the Plaintiff. It is also apparent that the questions of fact and law arising out of the Defendants' claims against the Central Bank of Kenya are not substantially the same as those arising as between the Plaintiff and the Defendant. They cannot be properly determined in the present suit.

In the event, I must refuse the leave sought. The application by chamber summons dated 6th March 2007 is hereby dismissed with no order as to costs. There will be an order accordingly.

DATED AT NAIROBI THIS 13TH DAY OF SEPTEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 21ST DAY OF SEPTEMBER, 2007