



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMANI COMMERCIAL COURTS COMMERCIAL AND TAX DIVISION
CIVIL CASE 325 OF 2005

EAN KENYA LIMITED
.....PLAINTIFF

V E R S U S

- 1. JOHN SAWERS**
- 2. HARRY DAVIES**
- 3. PETER OTIENO**
- 4. CHRIS MUNGA BICHAGE**
- 5. PROF. H. THAIRU**
.....DEFENDANTS

R U L I N G

There has been considerable delay in the preparation and delivery of this ruling. The same was occasioned by my serious illness in 2006 and the long attendant recuperation. The delay is regretted.

This is an application (by chamber summons dated 12th October, 2005) by the Plaintiff for consolidation of this suit with **Milimani HCCC No. 320 of 2005**. It is brought under Order 11 of the Civil Procedure Rules. Under rule 1 of that Order, where two or more suits are pending before the same court in which the same or similar questions of law or fact are involved, the court may, either upon the application of one of the parties or of its own motion, at its discretion, and upon such terms as may seem fit, order a consolidation of such suits and direct that further proceedings in any of such suits be stayed until further order. An order of consolidation is ultimately intended to promote expeditious disposal of suits, resulting in a saving on time and costs for the court and all the parties.

There is a lengthy supporting affidavit sworn by one **HAMEL SINGH SAGOO** who has described himself as a director of the Plaintiff. By his supplementary affidavit filed on 15th December 2005 with leave of the court, the pleadings in HCCC No. 320 of 2005 were exhibited. There is an equally lengthy replying affidavit sworn by the 2nd Defendant in opposition to the application. He has described himself

as the caretaker manager of the Plaintiff.

I have considered the submissions of the learned counsels appearing, including the cases cited. I have also perused the pleadings in both cases. Only **EAN KENYA LIMITED** features in both suits; it is the only plaintiff in HCCC No. 325 of 2005 and the first plaintiff in HCCC No. 320 of 2005. The other plaintiffs in that suit are **GSI** and **EGERTON UNIVERSITY**. The defendants in HCCC No. 320 of 2005 are **SAMUEL ALOYS MOTURI, MODERN STATIONERS CO. LTD.** and **HAMEL SAGOO**. These three are not parties in HCCC No. 325 of 2005 where the defendants are **JOHN SAWERS, HARRY DAVIES, PETER OTIENO, CHRIS MUNGA BICHAGE** and **PROF. H. THAIRU**.

But of course the test to be applied is not whether the parties are the same but where the same or similar questions of law or fact are involved in the suits. It is apparent from the pleadings in both suits that the genesis of the two suits is a difference between directors of **EAN KENYA LIMITED** regarding who has the authority of that company to file suit on its behalf. The core dispute really is, Who are the duly elected or authorised directors of the company? Otherwise, both suits aim at protecting the interests of the company.

I am satisfied that similar issues of law and fact arise in both suits. For reasons of expediency both suits will be best heard together. I will therefore allow the application. Both these suits, that is to say, **Milimani HCCC Nos. 320 and 325, both of 2005**, be and are hereby consolidated for hearing and disposal together. Costs of the application shall be in the cause. It is so ordered.

DATED AT NAIROBI THIS 5TH DAY OF SEPTEMBER, 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 7TH DAY OF SEPTEMBER, 2007