

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL DIVISION, MILIMANI
Civil Case 308 of 2005

HARBHAJAN SINGH DHILLON.....1ST PLAINTIFF

SIMBA ESTATES LIMITED.....2ND PLAINTIFF

VERSUS

SUKHWINDER SINGH DHILLON.....DEFENDANT

R U L I N G

This is an application by the Plaintiffs, **HARBHAJAN SINGH DHILLON** and **SIMBA ESTATES LIMITED** (chamber summons dated 2nd August, 2005) for consolidation of HCCC No. 235 of 2003 pending before this division with this present suit. In that other suit the Plaintiffs herein are the plaintiffs and the Defendant herein, **SUKHWINDER SINGH DHILLON**, is the defendant. The application is

brought under Order 11 which provides in rule 1 that where two or more suits are pending in 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. The test therefore is that the suits sought to be consolidated must be pending in the same court and must involve the same or similar questions of law or fact. The application is opposed by Defendant.

I have perused the pleadings in both cases comprising plaint, defence and counterclaim, and reply to defence and counterclaim (in HCCC No. 235 of 2003) and plaint and defence in the present suit (HCCC No. 308 of 2005). In HCCC No. 235 of 2003 the plaintiffs seek certain declarations in respect to various motor trucks and trailers mentioned therein, and mandatory and prohibitory injunctions in respect thereto. The defendant, while denying the plaintiffs' claim, has counterclaimed, *inter alia*, various sums of money amounting to KShs.14 million odd plus interest at commercial rates for transport charges, motor vehicle lease charges, goods sold and delivered, etc. Those counterclaims have been denied by the plaintiffs.

In the present suit (HCCC No. 308 of 2005) the Plaintiffs have sought in a plaint some 25 pages and 33 paragraphs long various large sums of money comprising contractual claims and damages. Also claimed is an order for the Defendant to hand over to the Plaintiffs the original log books of motor trucks and trailers which happen to be the same as those featuring in HCCC No. 235 of 2003. In the alternative various damages and orders are claimed. There are in total some 18 reliefs sought. In its defence which is some 36 paragraphs long the Defendant has denied the Plaintiffs' claim. In paragraph 4 of the defence it is pleaded that the Plaintiffs' suit is an abuse of the court process and bad in law as it seeks to canvass claims and raise issues that are presently the subject of HCCC No. 235 of 2003 and which should have been raised therein. It is also pleaded that the Defendant shall move the court to have that suit dismissed for that reason.

I have considered the submissions of the learned counsels appearing. It seems to me that consolidating the suits will deny the Defendant the opportunity to challenge the present suit under Order 2, rule 1(2) of the Civil Procedure Rules. That would not be just. It also appears to me that whereas the motor trucks and trailers mentioned in both suits are common to both suits and will feature prominently in the suits, the causes of action in each suit are different, and different issues of fact and law are involved. Besides, the length and complexity of the pleadings themselves, especially in HCCC No. 308 of 2005, are

such that consolidation of the suits can only make a difficult situation worse. This might in fact hinder, rather than aid, expeditious disposal of the suits.

For these reasons I will refuse the application. It is hereby dismissed with costs to the Defendant. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 24TH DAY OF JANUARY, 2006.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 27TH DAY OF JANUARY, 2006.