



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

Civil Case 673 of 2003

CREDIT BANK LIMITED.....PLAINTIFF

VERSUS

GRANDWAYS VENTURE LIMITED.....1ST DEFENDANT

MITESH FULCHAND SHAH2ND DEFENDANT

R U L I N G

Delay in the preparation and delivery of this ruling has been occasioned by my recent illness and hospitalization. The delay is regretted.

The Plaintiff has sought by notice of motion dated 11th January, 2005 transfer of the following suits from the subordinate courts to the High Court for disposal:-

- (i) **Nairobi CMCC No. 23287 of 2004;**
- (ii) **Nairobi CMCC No. 2388 of 2004;**
- (iii) **Nairobi CMCC No. 7243 of 2004;**
- (iv) **Nairobi CMCC No. 7244 of 2004;**
- (v) **Nairobi CMCC No. 7921 of 2004; and**
- (vi) **Nairobi CMCC No. 9546 of 2004.**

The Plaintiff seeks the further order that upon such transfer the said suits, together with the following suits pending before this court:-

- (i) **HCCC No. 30 of 2004;**
- (ii) **HCCC No. 31 of 2004; and**
- (iii) **HCCC No. 32 of 2004,**

be consolidated with the present suit, HCCC No. 673 of 2003, and all be heard and determined together.

The application is made under section 18 of the Civil Procedure Act, Cap. 21, and also under Order 11 of the Civil Procedure Rules. The grounds for the application appearing on the face thereof are:-

- (i) ***that the parties to all the above named suits are the same;***
- (ii) ***that the causes of action in all the suits are similar;***
- (iii) ***that the points of law and of fact likely to be advanced as well as the witnesses to be called are similar;***
- (iv) ***that it is in the interests of justice that all the orders sought be granted; and***
- (v) ***that the Plaintiff's application dated 8th October, 2004 seeking orders similar to those sought hereby was on 11th November, 2004 dismissed for non-appearance by both parties, which non-appearance was inadvertent.***

There is an affidavit sworn by the Plaintiff's advocate, **MR. ASHITIVA B. MANDALE**, to which are annexed, ***inter alia***, the pleadings in all those other cases.

The Defendants have opposed the application. There is a replying affidavit sworn by the 2nd Defendant and filed on 4th February, 2005. There is also a notice of preliminary objection dated 1st February, 2005. But learned counsel for the Defendants chose to take that objection in the course of hearing the application. In my view, that preliminary objection ought to have been taken before the application was heard on merit, and I propose to deal with it first.

The preliminary objection is that the present application is an abuse of the process of the court on account of the Plaintiff having filed a previous similar application which was dismissed for non attendance by the Plaintiff or its advocate at the hearing thereof. The said application was the notice of motion dated 8th October, 2004 filed on 13th October, 2004. It is virtually identical to the present application. When that earlier application came up for hearing on 16th November, 2004 there was no appearance for either party. The date had been taken by the Plaintiff's advocates; the application was dismissed with no order as to costs. Instead of applying for an order to set aside that dismissal, and thereby explain to the satisfaction of the court the failure to attend court on 16th November, 2004, the Plaintiff filed the present application some two months later. This, to my mind, is gross abuse of the process of the court, and it will not be countenanced. It will be noted that Order 9B, rule 7 is indicated as one of the provisions of the law under which the application is brought; but there is no prayer for an order to set aside the dismissal of 16th November, 2004. In these circumstances, the present application is an abuse of the process of the court, and I decline to consider it on merit. It is hereby struck out with costs to the Defendants. Order accordingly.

DATED AND SIGNED AT NAIROBI THIS 15th DAY OF FEBRUARY, 2006.

H. P. G. WAWERU

JUDGE

DELIVERED THIS 17TH DAY OF FEBRUARY, 2006.