



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**Civil Suit 181 of 2003**

1. JOSEPH B. ONGUTI.....1<sup>ST</sup> PLAINTIFF
2. SAMUEL MOMANYI.....2<sup>ND</sup> PLAINTIFF
3. ELIUD FEDHA.....3<sup>RD</sup> PLAINTIFF
4. THOMAS MACHARIA.....4<sup>TH</sup> PLAINTIFF
5. SULEIMAN YEYA.....5<sup>TH</sup> PLAINTIFF
6. JOHN OKETCH & 232 OTHERS .....6<sup>TH</sup> PLAINTIFF

**VERSUS**

1. HOTEL SPAN LIMITED.....1<sup>ST</sup> DEFENDANT
2. R.T. DUNNET.....2<sup>ND</sup> DEFENDANT
3. TRANSNATIONAL BANK LIMITED.....3<sup>RD</sup> DEFENDANT
4. SPIRES PROPERTIES KENYA LTD..... 4<sup>TH</sup> DEFENDANT

**RULING**

The plaintiffs herein, filed a summons pursuant to order

I rules 6 and 22 and Order VI A rule 5 of the Civil Procedure Rules in which they sought for leave to amend the plaint to enable them join 232 other people as plaintiffs. The 4<sup>th</sup> defendant when served filed grounds of opposition and a notice of preliminary objection to resist the summons. When the summons came up for interpartes hearing, Mr. Nyachoti who appeared for the 4<sup>th</sup> defendant sought to argue the preliminary objection.

The first ground raised in support of the preliminary objection is that the current application was filed while a near similar application dated 26<sup>th</sup> April 2005 is still pending unprosecuted.

The second ground is that the affidavit sworn by

Samuel Momanyi in support of the summons is fatally defective in the absence of a written authority under order I rule 12 of the Civil Procedure rules. The third ground is that Justice Mwera had found the suit incompetent by his order of 17.12.05.

Mr. Gikandi advocate for the applicants urged this court

to reject the Preliminary objection on the ground that there was no order barring the plaintiff from seeking for leave to amend the plaint. The learned advocate further argued that the order by Justice Mwera of 17.12.05 did not stop the applicants from filing this application

I have considered the submissions made by both learned counsels. I have also perused the summons plus the supporting affidavit and the grounds of opposition plus of course the preliminary objection. In my humble view I think the first ground will dispose of this matter, and in view of that, I will not belabour to consider the other grounds lest I may prejudge and prejudice the other pending application.

The argument of Mr. Nyachoti for the Respondent is that the summons now before this court raises nearly similar grounds and prayers as those set out in the summons dated 26.4.2005. This fact is not denied by Mr. Gikandi advocate for the applicants. I do not comprehend why the applicants decided to keep the summons dated 26.4.2005 in abeyance and started a new course by filing a fresh application. In my view the filing of multiplicity of applications over matters which could be encompassed in one application amounts to an abuse of the court process. In such circumstances this court will normally exercise its inherent power to strike out or dismiss and or stay the subsequent applications ex debito justitiae. I am satisfied that the preliminary objection is well founded hence it should be upheld.

In the circumstances of this case, I am of the view that a fair order is to order for stay which I hereby direct that the prosecution of the summons dated 10<sup>th</sup> February 2006 is halted pending the hearing and the determination of the summons dated 26<sup>th</sup> April 2006 in order to forestall further abuse of this court's process. The costs of this preliminary shall be payable to the 4<sup>th</sup> respondent in any event.

Dated and delivered at Mombasa this 26<sup>th</sup> day of May 2006.

J.K. SERGON

J U D G E

Read in open court in the presence of Mr. Gor H/B Raffman and for the 4<sup>th</sup> Defendant.

Gikandi for the plaintiff.