

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Case 193 of 2004

BENSON MWANGI WANGAI.....PLAINTIFF

VERSUS

IBRAHIM NDWIGA DEFENDANT

IBRESS MOTOR AGENCIES LIMITED.....APPLICANT

RULING

The applicant filed an application seeking to be joined as a defendant in this suit so that it could defend the plaintiff's suit. The affidavit in support of the said application was sworn by the defendant, a director of the applicant company. The deponent swore that the applicant was the lawful tenant of the suit premises, **Nakuru Municipality Block 1/755**. He referred to this court's ruling in this same matter delivered on 17th November, 2004 wherein I indicated that in **HCCC No. 76 of 2003** the applicant was allowed to file a suit against the plaintiff herein as a tenant of the plaintiff. It was therefore necessary to join the applicant as a party to the proceedings so that it could defend the suit, Mr. Waiganjo submitted.

Mr. Okeke for the plaintiff opposed the said application and said that the same was misconceived. He argued that since the applicant had not been sued by the plaintiff, the suit was only as against Ibrahim Ndwiga. In his view, the applicant had no demonstrable interest in the matter. He further argued that there were only two directors of the applicant, the defendant and one Esther Wambui Maina and the latter had sworn an affidavit on 21/3/2005 saying that the applicant had nothing to do with this matter.

Under Order I Rule 10(2) the court has unfettered discretion to order that any party who ought to have been joined either as plaintiff or defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all question involved in a suit be joined. It can even do so on its own motion.

From all the pleadings on record and in various documents produced by both the applicant and the respondent in this matter and other related matters and especially the leave in respect of the suit premises, it is apparent that Ibress Motor Agencies Ltd. was an integral party thereto.

The said lease was between the plaintiff's predecessor in title and Ibrahim Ndwiga (the respondent) trading as Ibress Motor Agencies Ltd. That was of course a wrong description of the lessee as earlier stated because an individual cannot trade as a limited liability company. What can be discerned from that description of the lessee is the fact that the plaintiff's predecessor in title conceived, whether rightly or not, that the respondent and the applicant were his tenants. In **HCCC No. 76 of 2003**, the plaintiff is the applicant herein, Ibress Motor Agencies Ltd while the defendant is the present plaintiff in this suit. It is therefore appropriate that the applicant be joined as a defendant in this suit so that the court can conclusively determine the dispute. The seeming disagreement between the directors of the applicant is an internal matter between them which should not affect third parties or be a bar to inclusion of the applicant as a party to this suit. If their differences will have any effect to the suit as between them and the plaintiff, that will only be determined during the hearing. I therefore allow the application dated 20/4/2005. The costs of the application shall be in the cause.

DATED, SIGNED & DELIVERED at Nakuru this 7th day of June, 2005.

D. MUSINGA

JUDGE

7/6/2005