REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL CASE NO. 138 OF 2000

EMMY JEROBON BETT ::: PLAINTIFF

VERSUS

RAEL CHEROP MARTIM & ANO. :: DEFENDANT

R U L I N G

Before me is an application by way of Chamber summons dated 12th October 2000. It was brought under Order XI Rule 1 Civil Procedure Rules. It seeks for order that this case be consolidated with Eldoret HCCC No.340 of 1997 pending before this court. The application is supported by an affidavit sworn on 27th November 2000 by Emmy Bett the applicant.

At the hearing of the application counsel for the three respondents raised preliminary objections to the application. Basically the trust of the preliminary objections is that this suit is fatally defective and should not be consolidated with HCCC.No.340 of 1997. It was the submission that the provisions of section 228 of the Companies Act were not complied with ie that the plaintiff did not obtain leave of the court to file proceedings against Post Bank Credit Ltd, which was under liquidation.

In response counsel for the applicant submitted that plaintiff/applicant had applied for leave and obtained it on 14/2/2000. He submitted that the documents on the leave granted are missing from the court file. So the court order granting the leave is not in the court file, though leave was so granted. He submitted that leave was granted to file H.C.C.C. No. Eldoret 340/1997 that is why plaintiff is applying to consolidate that case with Eldoret HCCC.138/2000. The application for leave to file suit was through Eldoret HC. Misc. Application 196 of 1999.

I have considered this application and the submissions of the counsel for the parties. The parties to the two suits are not exactly the same as Eldoret HCCC.No.138/2000 has a defendant called V. K. Saina who is not a party in Eldoret HCCC.340 of 20000. I have also perused the documents on Eldoret HC. Misc. Application 196 of 1999 and I am not convinced that the leave to file suit was granted as alleged though it was applied for. The record shows at the top of a page of the record that the matter was stood over to 14/2/2000. There is no further record leaving almost a whole page blank. We cannot presume from a statement from the bar that the leave was granted.

I have discretion in deciding to consolidate the two cases. As there are issues which are quite contentious. I will not consolidate the two cases. In the interests of justice the two cases will proceed for hearing separately.

It is so ordered.

Dated and delivered at Eldoret this ……. day of ……2004.

George Dulu

Judge

(I certify this a true copy of the original)

DEPUTY REGISTRAR