

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 1042 of 2004

CHANDARIA INDUSTRIES LTD.....PLAINTIFF

VERSUS

WALTER MUIRURI.....DEFENDANT

RULING

The Respondent takes a preliminary point that this suit offends the provisions of section 5 and 6 of the Civil Procedure Act.

Section 5 gives the Court power to try all suits except where barred. No reason has been given why this suit should be barred. It is true that some of the issues relied on in this suit may be similar to issues which may arise in HCCC No. 997 of 2004 but the cause of action in this suit is for recovery of documents and injunctive relief. Whereas the cause of action in that suit is unlawful dismissal and unjust confinement.

Section 6 gives the court power to stay a suit which the matters in issue are directly and substantially in issue in a previously instituted suit. I am however not dealing with an application for stay.

I am of the view however that these suits should be consolidated. However I will not make that order now as Mr. Oyatta says he intends to seek to strike out the suit filed by the Defendant in HCCC No. 997 of 2004.

I do not see that the preliminary point can succeed in disposing of the present application. The preliminary objection is therefore dismissed. I will now consider the present application.

Dated and Delivered this 14th Day of October 2004

P.J. RANSLEY
JUDGE