



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

CIVIL SUIT NO 802 OF 2002

NILAM DOSHI.....PLAINTIFF

VERSUS

CREDIT AGRICOLE INDOSUEZ LIMITED.....1ST DEFENDANT

GANSHYAM CHHOTABHAI PATEL.....2ND DEFENDANT

WILFRED J C KASHOMI.....3RD DEFENDANT

CIVIL SUIT NO 803 OF 2002

SANJITA SHAH PLAINTIFF

VERSUS

CREDIT AGRICOLE INDOSUEZ LIMITED 1ST DEFENDANT

GANSHYAM CHHOTABHAI PATEL 2ND DEFENDANT

WILFRED J C KASHOMI 3RD DEFENDANT

CIVIL SUIT NO 804 OF 2002

SANJITA SHAH PLAINTIFF

VERSUS

CREDIT AGRICOLE INDOSUEZ LIMITED 1ST DEFENDANT

GANSHYAM CHHOTABHAI PATEL 2ND DEFENDANT

WILFRED J C KASHOMI 3RD DEFENDANT

RULING

The Plaintiffs filed NBI (Milimani) HCCC No 802, 803 and 804 all of 2002 against M/s Credit Agricole Indosuez Limited whom I will refer to as the 1st defendant. On 20th February, 2003, the court, Mwera J, pursuant to an application filed by the 1st defendant in each of the three files, granted the 1st defendant

leave to issue third party notices against the parties now appearing as the 2nd and 3rd defendants.

I then see an application by the 1st defendant filed on 20th February, 2003 for leave to amend the defence and join the last two defendants as defendants to the suit and for an order that the last two defendants be allowed to file a defence. The amended statement of defence of the 1st defendant was filed on 12th March, 2003 and an amended Plaintiff was filed on 26th February, 2003, pursuant to an order made by the court, Mbaluto J on 21st February, 2003. The amended Plaintiff now claims against the defendants jointly and severally. The 2nd and 3rd defendants filed a defence and filed an application on 9th March, 2003 for leave to issue a third party notice against M/s Pallinder Holdings Limited for the reasons set out on the face of the application and the annexed affidavit. This application was filed in all the three files mentioned above and this ruling is in respect of those applications.

A replying affidavit was filed as the application was served upon counsel for the Plaintiff. In that replying affidavit, it is deponed that the Plaintiffs claim is against the 1st defendant and that M/s Pallinder Holdings is a total stranger to the said claim against the 1st defendant.

Order 1 Rule 14 (1) entitles a defendant for the reasons set out in that Rule, to seek the leave of court to issue a notice called a 3rd party notice. That leave shall be applied for by summons in chambers exparte, supported by affidavit. It is not clear why the court, Mbaluto J on 27th March, 2003 ordered the application to be served. Counsel for the Plaintiff and for the 1st defendant would have no right of audience to this exparte application.

I note that the 2nd and 3rd defendants were brought into the suit by an application made by the 1st defendant. It would be unjust to deny them leave to issue a 3rd party notice if in their view it is the intended third party that owes the money.

I therefore allow the three applications and grant the 2nd and 3rd defendants leave to issue a 3rd party notice within 14 days from date hereof for service upon M/s Pallinder Holdings Limited of P O Box 30216, Nairobi.

The costs of the said application shall be between the 2nd and 3rd defendants and the said 3rd party.

Delivered at Nairobi this 15th day of May, 2003.

S. C. ONDEYO

JUDGE

15.5.2003