



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC. CIVIL SUIT NO. 204 (O.S) OF 2001**

***IN THE MATTER OF THE REGISTERED LAND ACT, CAP 300 OF THE LAWS OF KENYA***

**AND**

***IN THE MATTER OF FREE HOLD INTEREST IN PARCEL NO. 4 BLOCK XII MOMBASA***

**AND**

***IN THE MATTER OF LIMITATION OF ACTIONS ACT, CAP 22 OF THE LAWS OF KENYA***

**BETWEEN**

**MISTRY VALJI NARAN MURJI .....PLAINTIFF**

**AND**

**1.JANENDRA RAICHAND SHAH**

**2.VIRCHAND MULJI MALDE**

**3.RATILAL GHELA SAMAT AND**

**4.PREMAC PROPERTIES LIMITED .....DEFENDANTS**

**RULING**

By notice of motion dated 3-12-2001 the Defendant/Applicant seeks order dismissing this suit or in the alternative the stay of proceedings pending hearing of HCC No. 423/2001 filed in this court between the same parties.

The application is filed under sections 3A and 6 of the Civil procedure Act cap 21.

The said provisions do not empower the court to dismiss proceedings. Inherent power of court cannot be invoked to dismiss suit for being an abuse of court, for duplicity, for being oppressive. Provisions for striking off of pleadings is provided under other procedural rules of Civil Procedure. I therefore decline to grant orders under this prayer.

On the issue of the alternative prayer for stay Section 6 Civil procedure Act provides

***“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim litigating under the same title, where such suit or proceedings is pending in the same court or any other court having jurisdiction in Kenya to grant the relief claimed”.***

The applicant claims that there is HCC No. 423/2001 between the same parties pending in this court. The plaint exhibit ‘A’ shows that the suit is between;

1. Janendia Raichand Shah
2. Virchand Mulji Malde
3. Ratilal Ghela Samati

Against

1. Valji Narani Mulji
2. Mistry V. Napran Mulji & Co. ( a firm)

This suit 204/01(OS) is filed between Mistry Valji Naran Mulji

Against

1. Janendia Raichand Shah
2. Virchand Mulji Malde
3. Ratilal Ghela Samali
4. Premach Properties Ltd.

It is to be noted that the plaintiffs in 423 are the defendants in 204(OS) together with one other party. The 2nd defendant in 423 Mistry V. Varan Mulji is the plaintiff in 204(OS). In suit 423 the plaintiffs as registered owners seek claims several orders including that of ejection of the defendants from the plot Mombasa/Block XII/4 Mombasa Island. In suit No. 204 (OS) the plaintiff claims for order to be registered as proprietor in place of the defendants of the same plot having acquired title under Limitations Act. In both suits the plaintiffs do show a cause of action. There is no dispute that the subject matter is the land registered as Mombasa/Block XII/4 in Mombasa.

Section 6 of the Civil Procedure Act demands that the disputes should be substantially and directly the same not that they should be similar. I find here we have two suits which are substantially similar and which relate to the same subject matter and are between the same parties.

In the circumstances the first suit in time shall proceed when the other is stayed pending the outcome. Therefore, I allow the alternative prayer with costs in the cause.

Dated 28-8-2002

**HON. J. KHAMINWA**

**COMMISSIONER OF ASSIZE**

MR. OBWAI

Present

I apply for copy of proceedings and the ruling .

Leave to appeal granted if necessary.

COURT

Orders granted as prayed.

**HON. J. KHAMINWA**

**COMMISSIONER OF ASSIZE**