

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS
CIVIL CASE NO. 1582 OF 2000

NATIONAL INDUSTRIAL CREDIT BANK LTD. PLAINTIFF
VERSUS
COME TO AFRICA SAFARIS LTD. 1ST DEFENDANT
MOSES OWITI 2ND DEFENDANT
BERRYL ACKEL 3RD DEFENDANT

RULING

The defendants herein have lodged this Chamber Summons application under O. XXI Rules 22 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act for a stay of execution of the decree in this matter pending the hearing of another application they had lodged on 15.3.2001 to set aside an ex parte judgment entered by this court against them on 25.1.2001. Prior to filing of the application, the same defendants had filed another application in this matter seeking similar orders. That application is still pending before this court. Section 6 of the 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 proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

By virtue of those provisions the applicants are not entitled to bring in the same suit, two similar applications involving the same parties in which the same reliefs are sought. Accordingly, the application now before court is not only incompetent but also an abuse of the process of the court. It is for that reason dismissed with costs.

Dated at Nairobi this 18th day of April, 2001.

T. MBALUTO
JUDGE