



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT

AT NAIROBI

ELC CASE NO 682 OF 2014

SUKHDEV SNIGH LALY.....PLAINTIFF

VERSUS

MAGNATE VENTURES LIMITED.....DEFENDANT

JOSEPH ELIJAH KARIUKI.....THIRD PARTY

RULING

1. The Defendant made an oral application for Third Party Notice. The Defendant in the oral application submitted that there was a Third Party Notice on record and the same was served on 18/05/2020 to the Third Party and they appointed an advocate. Further that the Defendant's claim to the Third Party is crucial and so the Defendant was praying to have the Third Party on record before the hearing

2. The oral application was opposed by the plaintiff on the following grounds:

a) That the suit is claim against the defendant and if the defendant was of the view that they had a claim against the third party, then this should not prejudice the plaintiff's case

b) That the intended application by the Defendant was only meant to frustrate and scuttle the hearing of the suit because the issues that the Counsel of defendant raised were never brought before the court on 23/06/2021 when the matter came up for hearing then.

c) Lastly that the court cannot indulge or give directions on an application that is not before the court.

3. This was an oral application by Counsel for the Defendant Mrs Mungai. This matter was previously handled by my sister Judge Gitumbi and sister Judge Komingoi. I note that there was an Notice of Motion dated 13/08/14 which was dismissed by my sister Judge Gitumbi on 29/11/2017. There is no record of the defendant making an application for setting aside of the dismissal or appealing the decision.

4. My analysis of this application persuades me to note that this is a matter that is rested. The oral application for the Third Party Notice is therefore *res judicata* as the court had rendered a ruling after the defendant made the formal application. I will not deal with an application which my sister Judge already rendered a ruling on. The court should also not allow parties to abuse the court process. If the applicant was dissatisfied with the ruling then they should have appealed.

5. On the issue of *res judicata* I am guided by the case of **Uhuru Highway Development Limited v Central Bank of Kenya & 2 others [1996] eKLR**, in which Shah J observed:

"My view is that what was decided by Githinji J. bars me from a very similar application now in a fresh suit filed to rectify the initial mistakes made procedurally by the applicants on the simple basis that Githinji, J. decided the injunction application on merits as laid down in Giella vs Cassman-Brown Principles.

6. I will therefore not entertain an application which on the face of it is an abuse of the court process.

7. Further, procedurally the application for leave to issue a third party notice, Order 1 Rule 15 of the Civil Procedure Rules provides for the procedure on how to enjoin third parties. It is trite law that a third party is enjoined in a suit at the instance of the Defendant and through the set procedure under Order 1 rule 15 – 22 of the Civil Procedure Rules. The liability between the Defendant and the third party is determined between the Defendant and the third party after the court is satisfied that there is a proper question to be tried as to liability of the third party and the Defendant.

8. The procedure also provides that the defendant shall apply to Court within fourteen days after the close of pleadings for leave to issue a notice (hereinafter called a third party notice) to that effect, and such leave shall be applied for by summons in chambers ex parte supported by affidavit.

9. In my view I am not convinced that the application for enjoining the third party has any merit. I therefore disallow application to issue the Third-Party Notice.

10. Those are the orders of the Court

Dated and delivered in the open Court in Nairobi this 21st day of October 2021.

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MOGENI J

JUDGE

Ruling read in open court in the presence of

Mr. Oguye for Plaintiff

Mrs Mungai for Defendant.

Mr. Vincent Owuor: Court Assistant.