



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & TAX DIVISION

MILIMANI LAW COURTS

HCCC NO. 1766 OF 2000

ALCON HOLDINGS LIMITED.....PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED.....DEFENDANT

AND

VIJAY HANSPAL.....INTERESTED PARTY

RULING

1. The Notice of Motion of 29th June 2020 seeks two substantive orders. The first is for joinder of Vijay Hanspal as an interested party and second that the consent dated and filed in Court on 8th November 2017 be set aside or be reviewed and that this matter do proceed to full hearing.
2. The impugned consent was entered between Alcon Holdings Limited (the Company or Plaintiff) and Kenya Commercial Bank (the Bank or the Defendant.)
3. Vijay Hanspal is the son of the late Inderjit Singh Hanspal (the Deceased) who until his death held 333 shares in the company. At incorporation of the company, the other shareholders were Kultar Singh Hanspal (334 shares) and Davinder Singh Hanspal (333 shares). There is a contention as to the current shareholding between the estates of Davinder Hanspal and Kultar Hanspal. The former is contending that Kultar Hanspal transferred all his shares to Davinder and the estate of Kultar is disputing. For purposes of the matter at hand the shareholding of the estate of Inderjit Hanspal being 333 shares is undisputed.
4. Emerging and not disputed by the Company and Bank is that all the shareholders and directors of the Company were dead at the time the consent was entered on 8th November 2017. The last to die being Davinder Singh Hanspal on October 2017. The assertion by the Applicant is that the firm of M/s Ibrahim & Isaack Advocates for the Company, did have to seek or have instructions from him to enter the consent.
5. Before making observations as to whether or not the orders sought by the Applicant are grantable, I wish to say the following in respect to his capacity to bring the application in the name of the Estate of the Deceased. It is common ground that the Applicant is the executor of the will of the Deceased made on 29th June 2013. It would seem that the Applicant had not taken out grant of probate as of the date of the application. This however does not bar the executor of the will from protecting the estate including a right to commence an action (See for instance **Ganjee Glass Mart Ltd & 2 Others v First American bank of Kenya limited [2005] eKLR**). For that reason, the Applicant has locus standi to seek joinder on behalf of the estate of the Deceased.
6. That said the application faces a more unforgiving challenge. The substantive parties to this suit are the Company and the Bank. The true nature of the grievance of the Applicant is that the consent was entered without the authority of Company as there was no Board of Directors or living shareholders. That grievance, in my view, belongs to the Company and although the shareholders or estates of the shareholders could feel aggrieved by the Consent, still, because of the legal distinction between a company and its owners, the person to challenge the consent is the Company. Individual shareholders acting outside the corporate entity cannot do so.
7. Without much ado, the Application cannot go any further. The Application of 29th June 2020 is struck out with costs.

Dated, Signed and Delivered in Court at Nairobi this 11th Day of March 2021

F. TUIYOTT

JUDGE

ORDER

In view of the declaration of measures restricting Court operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 17TH April 2020, this Ruling has been delivered to the parties through virtual platform.

F. TUIYOTT

JUDGE

PRESENT:

Mituga for the Interested Party.

Ms. Wamuyu holding brief for Ngugi for the Defendant