



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISCELLANEOUS APPLICATION NO.E013 OF 2020**

**IN THE MATTER OF: SECTION 103 OF THE COMPANIES ACT, NO.17 OF 2015.**

**AND**

**IN THE MATTER OF: RECTIFICATION OF THE COMPANY REGISTER.**

**AND**

**IN THE MATTER OF: DHANJAL BROTHERS LTD**

**AND**

**IN THE MATTER OF: THE COMPANIES (HIGH COURT) RULES**

**BETWEEN**

**JOGINDER SINGH DHANJAL.....APPLICANT**

**VERSUS**

**DHANJAL BROTHERS LIMITED.....1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF COMPANIES.....2<sup>ND</sup> RESPONDENT**

**RULING/DIRECTIONS**

1. The matter came up for directions with regard to hearing of two applications, dated **22<sup>nd</sup> October, 2020** taken out by **Mr. Joginder Singh Dhanjal** and **19<sup>th</sup> November, 2020**, filed by the 1<sup>st</sup> Respondent, respectively.

2. In the application dated **22<sup>nd</sup> October, 2020**, **Mr. Kibunja** appears for the Applicant and in explaining its nature, told the court that the same is simply a complaint for intermeddling following the death of the his father, **Jaswant Singh**. **Mr. Kibunja** has however intimated that there is a Succession Cause being, **Succession Cause No.20 of 2006** which is

coming up for hearing in **September, 2021** and to avoid a situation where this Court might make a conflicting order to what may be decided in the Succession Cause, there is need that the instant application be stood over generally to await the outcome of the Succession Cause.

3. **M/S Wanjiku**, counsel for 1<sup>st</sup> Respondent, on the other hand did not rest the matter at **Mr. Kibunja's** submissions. She has totally disagreed with **Mr. Kibunja** and opined that owing to the fact that there is a pending Succession Cause, this Court lacks jurisdiction to entertain the complaint launched before it in this matter. She states that the correct forum would have been in the same Succession Cause. She also adds that if the Applicant thinks that he does not have a cause of action, then he might as well withdraw the matter and await the outcome of the Succession Cause, and thereafter decide on whether to still move the court.

4. In a quick rejoinder, **Mr. Kibunja** submitted that withdrawing the case would prejudice the other four Applicants who are yet to be heard.

5. I have perused the court record and note that there is a further **Notice of Motion** dated **7<sup>th</sup> December, 2020** filed by the **Firm of M/S**

**Aoko Githara & Company Advocates** on behalf of the Interested Parties. However, there was no representation of any one from the said Firm of Advocates, hence the application was not addressed at all. This Court is therefore minded to exercise leniency by granting directions that do not drastically affect the Applicants in the application dated **7<sup>th</sup> December, 2020**.

6. Nonetheless, having listened to submissions and arguments by **Mr. Kibunja** and **M/S Wanjiku**, I find that there was consensus on the existence of **Succession Cause No.20 of 2006** which is still pending determination and all the parties herein are involved. **Mr. Kibunja** advocates for the matter herein to be stayed pending the determination of the said Succession Cause while **M/S Wanjiku** thinks that it would be right for orders to issue directing the Applicant in the application dated **22<sup>nd</sup> October, 2020** to withdraw the suit and lodge the complaint herein in the pending Succession Cause.

7. In addressing the question of jurisdiction of this Court as raised by **M/S Wanjiku**, I wish to point out that, firstly, this Court, under **Article 165** of the **Constitution** has unlimited jurisdiction in Civil matters including the one at hand. And that the divisions created in the High Court are merely meant to ease administrative and efficient disposition of the matter before it without limiting the jurisdiction of the court. This is so to say that the Commercial Division can be allocated matters from the Family Division and vice versa. The objection by **M/S Wanjiku** therefore appears to be the similarity of the issues in the Succession Cause and the matter herein.

8. However, I am not privy to the Succession Cause and cannot tell what issues are pending or have been addressed in the said matter. My view is that the Applicant herein had an option of raising her complaint either in the Succession Cause or as a fresh suit as the one herein; as his hands were not entirely tied to the Succession Cause.

9. Having said as much, I am of the opinion that the matter be stayed generally to await the determination of the **Succession Cause NO.20 of 2006** so as to avoid the court having to adjudicate on the same issue in both matters. And upon the conclusion of the Succession Cause, the Applicant be at liberty to elect whether to continue or withdraw the matter herein.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT MOMBASA THIS 8TH DAY OF JULY , 2021.**

**D. O. CHEPKWONY**

**JUDGE**

In the presence of:

Mr. Kibunja counsel for Applicant

M/S Wanjiku – Nduati counsel for Respondent

Court Assistant - Winney