



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL CASE NO. 527 OF 2010

COLONEL TOM C.K. KING'ETICH.....PLAINTIFF

-VERSUS-

THE STANDARD LIMITED.....DEFENDANT/APPLICANT

RULING

1) The Standard Ltd, the defendant/applicant herein, took out the motion dated 30th June 2020 and sought for the following

orders:

a) This suit be consolidated with HCCC no.511 of 2010 Brig Arthur Owuor –vs- The Standard Ltd; HCCC no. 512 of 2010 Edward Muri –vs- The Standard Ltd; HCC 513 of 2010 Hosea A. Oduor –vs- The Standard Ltd; HCCC no. 515 of 2010 Brig. Joseph Bukhala –vs- The Standard Ltd; HCCC no. 516 of 2010 Zedekiah G. Ogendi –vs- The Standard Ltd; HCCC no.517 of 2010 Maj. Herbert Kiptorich –vs- The Standard Ltd; HCCC no. 510 of 2010 Maj. Charles K.Muhia –vs- The Standard Ltd; for hearing and determination of the issue of quantum and assessment of damages;

b) This suit shall be the lead file for purposes of filing any other documents and recording proceedings; and

c) Costs of the application to be on the cause.

2) The defendant filed two affidavits sworn by Benard Ogutu in support of the motion. When served with the motion Col. Tom C. K. Kipng'etich, the plaintiff herein, filed the replying affidavit sworn by Mr. Desterio Oyatsi to oppose the application. This court gave directions to have the motion disposed of by written submissions.

3) I have considered the grounds stated on the motion plus the facts deponed in the affidavit filed in support and against the motion. I have also considered the rival written submissions plus the authorities cited.

4) It is the submission of the defendant/applicant that the order consolidating the suits mentioned herein should be granted because they arose from the same cause of action. It is pointed out that there are common questions of law and facts within the suits hence it is desirable that the whole of the matters should be disposed of at the same time.

5) The applicant argued that the consolidation will assist to have the matters determined justly and expeditiously. It is also argued that the consolidation will avoid issuing of awards founded on different and conflicting considerations. The defendant further stated that no prejudice will be visited upon any of the parties because assessment of damages will be done separately but within the same file.

6) The plaintiff/respondent urged this court to dismiss the application for consolidation stating that there is no consolidation of plaintiffs in a libel suit against a common defendant on the determination of the damage

caused to the character and reputation of the plaintiffs which is a subjective matter since no two plaintiffs can have the same character and reputation.

7) The plaintiff further argued that in libel, consolidation is only applied where the plaintiff has been defamed by two or more defendants in the same publication. The plaintiff relied on Section 17(1) of the Defamation Act which provides as follows:

“The court or judge may, upon the application by or on behalf of two or more defendants in actions in respect of the same, or substantially the same, defamatory statement brought by the same plaintiff, make an order for the consolidation of such actions.”

8) Having considered the material placed before this court together with the rival submissions, there is no dispute that liability has been settled in **Nairobi H.C.C.C. no. 518 of 2010 Brig. Kenneth Okoki Dindi =vs= the Standard Ltd** the test suit. What is now pending is the assessment of damages. The Supreme Court of Kenya stated the essence of consolidation in the case of **Law Society of Kenya =vs= The Centre for Human Rights and Democracy & 12 others (2014) e KLR *inter alia*** as follows:

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage towards the party that opposes it.”

9) I have taken into account the reservations made by the plaintiffs. However, I am persuaded by the argument put forward by the defendant/applicant that consolidating the aforementioned suits will assist the court to expedite the hearing and determination of the same.

10) I am also satisfied that by consolidating the suits judicial time will be saved. Though defamation is subjective and restricted to a particular party, it is possible to undertake separate assessment of damages for each party within the consolidated suit.

11) In the end, I find that the defendant/applicant has demonstrated sufficient cause to enable this court exercise its discretion in its favour. Consequently, I allow the motion dated 30th June 2020 as prayed.

Dated, signed and delivered online via Microsoft Teams at Nairobi this 9th day of October, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

.....for the Defendant