



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION-MILIMANI
CIVIL CASE NO.437 OF 2017

CHARLE NGETHE MWAURA.....PLAINTIFF/RESP.

VERSUS

BARCLAYS BANK OF KENYA LIMITED.....1ST DEFENDANT

C&R GROUP.....2ND DEFENDANT

AND

NAZMUDIN KURJI.....INTERESTED PARTY

AND

SANA LIMITED (C.18758).....PROPOSED 2ND INTERESTED PARTY

RULING

This a ruling on the second interested party's application dated 15th March 2018 seeking to be enjoined as the second interested party.

Grounds on the face of the application are as follows:-

- That the Applicant SANA LIMITED (C.18758) is a shareholder of Barclays bank Kenya Limited through Share Certificate No. [particulars withheld] which is the subject matter of this suit.
- That the proposed interested party has been adversely mentioned in the proceedings including Chamber Summons dated 30th November 2017.
- That participation of interested party is necessary for purposes of determining and dealing with the issues in controversy in this suit.
- To ensure that the interested party is not condemned unheard.

The application is supported the Affidavit sworn by the 1st interested party NAZMUDIN KURJI. He restated grounds on the face of the application.

In response the Plaintiff filed Replying Affidavit sworn on 26th April 2018.He averred that SANA LIMITED although mentioned in these proceedings was not mentioned as a different identity from his company SANA SHOE LTD but as short form as is commonly referred to in its shortened or abbreviated version.

Plaintiff averred that he incorporated SANA SHOE LTD in 1972 after leaving BATA SHOE LTD where he had worked since 1960s.He further averred that he left the management of the company to his accountant due to long illness of his wife and is not able to produce incorporation documents. He however, he indicated that the Applicant is still a shareholder of 1st Defendant.

Plaintiff averred that the interest of the Applicant are unknown, as it does not allege whether it has been unable to cash dividend cheques for 825 shares.

Plaintiff aver that on his part he has received dividend cheques but is unable to cash since the company was dissolved and the Defendants have termed them as unclaimed shares hence the instant suit.

Plaintiff opposed the application on the ground that the Applicant's interest is unclear.

I have considered rival arguments by parties herein.

Despite the fact that the Plaintiff allege that the Applicant's interest is unclear, it is not disputed that the Applicant herein has 825 shares in the 1st Defendant. This has been confirmed by the Plaintiff.

The Applicant has indicated that the intention in filing this application is to protect its interest. The fact that part of the shares indicated in the pleadings herein belong to the Applicant makes it a necessary party in this suit. It would be in the interest of justice to accord the Applicant opportunity to participate in this proceeding. The Applicant's participation will assist the Court in determining all issues involving parties herein. I therefore find the intended interested party a necessary party in this suit.

FINAL ORDER

Application dated 15th March 2018 is hereby allowed. The 2nd Interested Party is hereby enjoined as a party in this suit.

Ruling Delivered, Dated and Signed at Nairobi this 6th day of December, 2018

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RACHEL NGETICH

JUDGE

IN THE PRESENCE OF

SAKINA: **COURT ASSISTANT**

NO APPEARANCE: **COUNSEL FOR PLAINTIFF/RESPONDENT**

WANJIRU H/B FOR KIGATA: **COUNSEL FOR 1ST & 2ND DEFENDANT**

MS. NJIRU H/B FOR MUREITHI: **COUNSEL FOR PROPOSED 2ND INTERESTED PARTY**