



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL & ADMIRALTY DIVISION

HCCC NO. 373 OF 2003

CANNON ASSURANCE (KENYA) LTD.....PLAINTIFF

VERSUS

MOHANSONS FOOD DISTRIBUTORS LTD..... DEFENDANT

RULING

1. By an application dated 16.10.2015 the Defendant seeks an Order that the Plaintiff herein be struck out with costs to the Defendant.
2. The application is based on the fact that the Plaintiff has been sold off or merged with Metropolitan Life Kenya; and thus the Plaintiff seem to have ceased to have legal personality and cannot have and does not have locus standi to proceed with suit. The supporting affidavit indicates that the deponent Mr. Khandafi made enquiries and belief that the Plaintiff does not exist. He also avers that it came to his notice that the Plaintiff had merged with another entity.
3. In opposition to the application the Plaintiff's side filed an affidavit sworn on 27.4.2015 confirming that the Plaintiff is a limited liability company with registration No.7122 and annexed certificate further grounds of opposition reiterating the same position were filed.
4. The parties agreed and did file and exchange written submissions to canvass the application. The Defendant submits that there is no evidence from the Plaintiffs side to show that it only changed name or sell shares which is claimed to have taken place rather than a merger.
5. The burden relies on the Plaintiff to show it retains the locus it initially had in the matter to continue the proceedings which the Plaintiff has failed and/or neglected to discharge.
6. According to the Plaintiff/Respondent the only issue herein is whether the Plaintiff exists a legal entity. The Plaintiff submits that the legal personality of a Company emerges from its incorporation; see S.16(2) of Cap 486 Laws of Kenya. The certificate issued thereof evidence that a company was duly registered. See S.17 of Cap 486. The Act also provides the process of how a Company is dissolved and/or deregistered. None of the aforesaid processes of rendering company non-existence has been demonstrated by the Applicant.
7. The Plaintiff submits that sale of shares and change of names of the Company does not 'kill' the Company's legal Entity. The only evidence being tendered by the Applicant is an online print out of an article alleging a merger between Plaintiff and Metropolitan Life (K) Ltd. The alleged search at Registrar of Companies on the status of the Plaintiff has not been annexed to evidence the same.
8. After going through parties pleadings, affidavit and the submissions, I find the only issue for determination is; Whether the Plaintiff is legal entity for purposes of the instant suit?

9. According to the Applicant the Plaintiff merged and/or was sold to the Metropolitan Life (K) Ltd thus ceasing to exist and losing legal entity and thus no locus standi to continue prosecuting suit as the Plaintiff.
10. The Respondent rejoinder is that the process of killing a Company thus decimating its legal entity has not been undertaken and thus as evidenced by the registration certificate it is still a legal entity as it only sold the shares.
11. A Company's legal personality commences upon registration vide S. 18(2) of Cap 486 Laws of Kenya and the certificate issued thereof evidences the legal personality thereof. See S.17 of Cap 486. A company can only cease to exist as a legal entity upon being deregistered and/or dissolved. See the provision of 486.
12. Under S.16(2) the Company has right to sue or be sued. A Company is the proper Plaintiff in case of wrongs done to it. See **FOSS VS. HARC BOTTLE (1843) 67 ER 189**. S.75 of Cap 486 is to the effect that company shares are movable properties transferable in a manner provided by its Articles. It is thus inconceivable that the transfer would be deemed to occasion change of status of the Company. Despite sale of shares, the company retains its character as a separate legal entity. See **EBBC VALE UDC V. S WALES TRAFFIC AREA LICENSING AUTHORITY (1951) 2 KB 366**.
13. The Defendant is shifting the burden of prove by alleging non-existence of Plaintiffs legal entity and then nudges the Plaintiff to prove that it exists as a legal entity.
14. The Defendant has not impugned certificate of registration tendered no tender evidence of dissolution of the Plaintiff or deregistration.
15. The Court therefore makes the following Orders:
 1. **The Notice of Motion dated 14.10.2015 is dismissed.**
 2. **Costs to the Plaintiff/Respondent.**
 3. **Parties to comply within 30 days to enable matter be fixed for hearing.**

Dated, signed and delivered in court at Nairobi this 8th day of April, 2016.

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C. KARIUKI

JUDGE