



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL SUIT NUMBER 77 OF 2013

SUKHWINDER SINGH JUTLEY..... PLAINTIFF/APPLICANT

VERSUS

SAADIA KARIMBUX EFFENDY DEFENDANT/RESPONDENT

RULING

1. The plaintiff and applicant hereof Sukhwinder Singh Jutley filed an application dated 23rd July 2014 and sought an order that:

That this suit be consolidated with HCCC NO. 511 of 2013 for hearing and determination.

The grounds upon which the application is brought are stated on the face of the application, that the subject matter in this case is similar, that all witnesses in both cases are similar and for purposes of convenience and expeditious disposal, the two suits ought to be consolidated. The applicant swore the supporting affidavit on the 23rd July 2014, and a further affidavit on the 25th June 2013. He stated that while this case was pending, the defendant filed a similar case at **Nairobi Milimani HCCC No. 511 of 2013**.

2. The applications is opposed by grounds of opposition filed on the 19th November 2014 and a replying affidavit filed on even date. In a nutshell the respondent states that cause of action and remedies sought are different and the two parties to the suits are not the same.

3. **Order 11 of the Civil Procedure Rules** provides for consolidation of suits and states:

“----- where two or more suits are pending in the same court in which the same or similar questions of law or fact are involved, the court may either upon the application of one of the parties or of its own motion, at its discretion upon such terms as may seem fit,

(a) Order consolidation of such suits, and

(b) Direct that further proceedings in any of such suits be stayed until further order.

Before a court may consider consolidating suits it ought to consider that:

1. The issues raised in both suits are nearly similar

2. *That the suits as filed are based on the same causes of action, facts and the law*

3. *That the reliefs sought are similar*

4. The essence of consolidation of suits 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. It is not intended to confer advantage upon the party seeking the order, nor occasion disadvantage to the other party that opposes it. See **Supreme Court Petition No. 14 of 2013 in Law Society of Kenya -vs- The Centre for Human Rights and Democracy**. While this court has read the plaint and the reliefs sought in this case, the applicant has not availed the originating summons that brought in the case in the **HCCC No. 511 of 2013** filed at the **Nairobi Milimani Commercial Court**.

What has been availed are the first Respondents (the plaintiff in Nakuru case) further Replying Affidavit sworn on the 16th October 2014 and Applicant's second further supplementary Affidavit sworn by Saadia Karimbux – Effendy (the defendant in Nakuru case) sworn on the 16th October 2014 (the defendant in Nakuru case) sworn on the 16th October 2014.

5. The Respondent in this case in his Replying Affidavit and grounds of opposition state that the two suits are different, parties are different and the causes of action and reliefs sought are also different without the benefit of perusing and considering the Nairobi Milimani case, this court is unable to make a determination on whether or not the two suits meet the requirements as provided under **Order II of the Civil Procedure** rules and case law.

6. For those reasons, the application is is dismissed with costs.

Dated, signed and delivered in open court this 15th day of September 2016

JANET MULWA

JUDGE