



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & ADMIRALTY DIVISION

CIVIL SUIT NO. 473 OF 2014

DAVID WAMBUA NGII..... 1<sup>ST</sup> PLAINTIFF

MARGARET KISANGULA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF  
THE LATE MALUKI K. KISANGULA ..... 2<sup>ND</sup> CLAIMANT

VERSUS

DR. JOHN KIOKO MUSINGI.....1<sup>ST</sup> DEFENDANT

SIMON NJENGA.....2<sup>ND</sup> DEFENDANT

EVANS UMBUNDU BOGE.....3<sup>RD</sup> DEFENDANT

KIESTA INDUSTRIAL TECHNICAL SERVICES LTD.....4<sup>TH</sup> DEFENDANT

RULING

**Preliminary Objection: another suit pending**

[1] This is the Plaintiff’s preliminary objection dated 10<sup>th</sup> November, 2014; that there is another suit pending in court, i.e. NBI HCCC NO 157 of 2012 on the same subject matter and between the same parties. Therefore, this suit is an abuse of court process. The Plaintiff filed submissions opposing the objection. The 3<sup>rd</sup> Defendant only filed an affidavit annexing a ruling in case NO 157 of 2012.

[2] The Plaintiff argued that, the objection is based on Section 6 of the Civil Procedure Act but the parties as well as the subject matter in HCC No.157 of 2012 are different and so the objection should fail. In any event, the objection will need affidavit evidence to prove, and so it is not a true preliminary objection in the sense of **Mukisa Biscuits Manufacturing Co. Ltd Vs. West End Distributors Limited [1969] EA 696** that;-

*“A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”*

[3] I take the following view of the matter. A party can take out an objection based on section 6 of the Civil Procedure Rules. Although, however, such objection may at first instance result into staying of one or more of the suits, it may also lead to the offending suit being struck out altogether. Section 6 of the CPR should be understood that it abhors multiplicity of suits, and its major aim is to prevent abuse and maintain the integrity of process of court. Therefore, matters falling under section 6 of the CPR bear invaluable preliminary significance in adjudication of cases. In a manner of speaking, where human beings are the players, almost invariably, mischief will occur. And, it is such possibilities that parties may file more than one suit between same

parties or litigating under the same title, and on same subject matter, which made the law to demand that every plaint should contain an averment stating that there is no any other proceeding pending in court between the same parties and on the same subject matter. See Order 4 rule 1(f) of the Civil Procedure Rules on this requirement.

[4] After considering all arguments put forth, and perusing the documents availed to court, I note that there is close connexion between this suits and the other mentioned herein, namely, NBI HCCC NO 157 of 2012 and NBI MISC APP 340 OF 2011. There is merit in the court investigating the possibility of multiplicity of suits. To enable me do that, I direct that all these files to be placed before me on a date I shall fix. I will thereafter give appropriate directions and relief. It is so ordered.

**Dated, signed and delivered in court at Nairobi this 6<sup>th</sup> day of March 2015**

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**F. GIKONYO**

**JUDGE**