



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
CIVIL SUIT NO. 364 OF 2010

WWW BID INVESTMENT COMPANY LIMITED.....PLAINTIFF

VERSUS -

TAUSI ASSURANCE COMPANY LIMITED.....1ST DEFENDANT

RAKIKLAL CHHOTALAL KANTARIA.....2ND DEFENDANT

PRIME CAPITAL HOLDINGS LIMITED.....3RD DEFENDANT

RULING

1. This is an application brought by the plaintiff, **WWE BID INVESTMENT COMPANY LIMITED**, seeking the consolidation of this suit with two (2) other cases, being;

- i. **WWW BID INVESTMENTS COMPANY LIMITED VS. TAUSI ASSURANCE COMPANY LIMITED, HCCC NO. 566 OF 2009; and**
- ii. **MUKESH PATEL VS TAUSI ASSURANCE COMPANY LIMITED HCCC NO. 93 OF 2010.**

2. It is the contention of the plaintiff that the three (3) suits arise out of the same facts and also that the advocates involved are the same.

3. Therefore, the plaintiff is of the view that the consolidation of the three cases was necessary for the proper determination of the whole of the plaintiff's claim.

4. As far as the plaintiff was concerned, the consolidation of the three cases would not prejudice any of the parties.

5. It was the plaintiff's submission that the three cases all revolve around the Legal Notice Number 97 of 2007; the Annual General Meeting held on 22nd May 2010; and the offers made to the plaintiff on the issue of the number of shares that could be available for purchase.

6. That being the case, the plaintiff's view was that the parties would all utilize the same witnesses and the same documentary evidence, during the trial.

7. Therefore, the plaintiff argued that the consolidation of the three cases would save on costs, time and effort in the hearing and determination of the cases concerned.

8. The plaintiff relied upon the decision of Mutungi J. in the case of **NAVEL KISHORE BHALLA & 4 OTHERS VS FIRST NATIONAL BANK; MINAR RESTAURANTS VS THE FIRST NATIONAL BANK LIMITED; AND AFRICAS DISTRIBUTORS (K) LIMITED VS THE FIRST NATIONAL BANK LTD, CIVIL CASE NO. 1070 OF 2003**. The learned Judge said;

“Consolidation is meant to avoid duplication in dealing with same or similar legal or factual questions which run through the two or more suits”.

9. It is noteworthy that Mutungi J. did cite, with approval, the decision of Kneller J, in the case of **STUMBERG AND ANOTHER VS. PETGEITTER [1970] E A 323**. I say that it is noteworthy because in that case the learned Judge declined to consolidate two cases for the reason that;

“A common question of law or fact bearing sufficient importance in proportion to the rest of the action to render it desirable that the whole of the matters should be disposed of at the same time...”

There may have been one transaction but different causes of action have arisen out of it”.

10. In effect, even when some question (s) of fact or law may be common in two or more cases, that alone may not be a sufficient basis upon which the court should order the consolidation of such cases.

11. The question or questions of fact or law should bear sufficient importance in proportion to the rest of the action, so as to render it desirable to have all the cases in which the question arises, disposed of in one consolidated case.

12. The plaintiff also placed reliance upon the decision of Kasango J. in **MUTURI INVESTMENTS LIMITED VS NATIONAL BANK OF KENYA LIMITED HCCC NO. 199 OF 2005**. In that case, the learned Judge expressed herself thus, about the reasons why consolidation of cases serves a useful purpose;

“It is clear to me that to order the suits to be heard separately will mean that the evidence submitted by the parties will be duplicated in both cases. There is therefore, the danger and every likelihood that the different courts could reach different decisions in the two cases”.

13. That explains why, in deserving cases, consolidation is ordered. It serves to save on time, costs and energy, as duplication of efforts is avoided. Secondly, the possibility of two or more courts arriving at inconsistent, contradictory or irreconcilable decisions is removed.

14. The 2nd and 3rd defendants have opposed the application. First, they have said that the case herein had been effectively overtaken by events because the 3rd defendant had already undergone substantial restructuring. The said restructuring was said to have taken place after the plaintiff lodged a complaint, leading to the Commissioner of Insurance declining to approve the transfer of shares.

15. That contention, if it is factually accurate, should not be a basis for rejecting the application. I so hold because by bringing the two cases i.e **HCCC NO. 866 of 2009** and **HCCC NO. 364 of 2010** together, the defendants will have been given an opportunity to demonstrate, at one go, why the plaintiff should not be allowed to say anything that was not consistent with what had transpired in the other case.

16. Indeed, at the stage of the pre-trial conference, the parties would be able to agree upon matters which were no longer in issue.

17. But then again, I do appreciate the defendants’ contention that the plaintiff appears to be shifting its position. I say so because at paragraph 25 of the Plaintiff herein, the plaintiff asserted as follows;

*“THAT save for **HCCC No. 866 of 2009 WVV Bid versus Tausi Assurance Company Limited**, which is based on a distinct issue in law, involving the plaintiff and the 1st Defendant, there are no pending proceedings between the Plaintiff and the Defendants”.*

18. If that assertion was accurate, then it cannot also be true, as the plaintiff is now stating in its submissions, that;

“It is our submission that the three suits pending before this Honourable court arise out of the same facts and law, and involve the same Advocates...”

19. The issues of law cannot be both distinct and the same.

20. I have given careful consideration to the pleadings in the three suits. The central theme in all the said cases is the shareholding in **TAUSI ASSURANCE COMPANY LIMITED**. WWW Bid Investment Company Limited contends that TAUSI should be stopped from offering shares to Rasik Kantaria and Prime Capital Holdings Limited.

21. According to WWW Bid Investment Company Limited, it should be allotted 240,000 more shares in **TAUSI**.

22. Meanwhile, **MUKESH PATEL** also insists that **TAUSI** should be compelled to transfer 30,000 shares to him.

23. The various claims are denied by **TAUSI**.

24. In my considered opinion, it would be in the interests of justice to have one court determine the claims in one case. If that happens, there would be no possibility of discrepancy or inconsistency in the respective allotments of shares to each of the claimants.

25. I do therefore order that the three (3) suits be consolidated for hearing and determination.

26. Following the said order for consolidation, I further order that the parties should proceed to set out the Issues arising so that the same can then be placed before the trial court for determination.

27. As regards costs of the application, I order that the same be borne by the plaintiff in any event. I so order because if the plaintiff had not filed separate suits, and then sought to have them consolidated, the application would never have been necessary.

DATED, SIGNED and DELIVERED at NAIROBI this 6th day of October 2014.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of

Miss Kosgei for the Plaintiff.

Amoko for the 1st Defendant.

Ouma for the 2nd Defendant.

Ouma for the 3rd Defendant.

Odhiambo, Court clerk.