



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT NO. 1 OF 2004

CLEARSPAN CONSTRUCTON (A) LIMITED PLAINTIFF

V E R S U S

EAST AFRICAN GAS COMPANY LIMITED DEFENDANT

AND

VIKING WORLD INVESTMENT SA OBJECTOR/APPLICANT

RULING

1. This ruling follows an off record discussion in Court on 11th July 2013 with both the Plaintiff's and Objector's Counsel. The discussion related to the Plaintiff's failure to serve the Defendant with its application by way of Notice of Motion dated 2nd April 2013. The application seeks an order for security of cost to issue against the Objector.
2. The Plaintiff obtained judgment against the Defendant. The objection raised by the Objector Viking World Investment SA related to execution being carried by the Plaintiff.
3. The question that this ruling addresses is whether a party to a suit can choose when to serve some parties to a suit and leave others.
4. Persons are joined in a suit because they either seek relief or relief is sought against them in respect of acts, transactions or series of act. Once such parties are joined in the suit either as Plaintiffs or Defendants the Civil Procedure Rules refers to them as party to a suit.
5. They remain party to such suit until the Court either on its own motion or on application orders their substitution or their removal. See Order 1 of the Civil Procedure Rules.
6. It follows where there are more than one party, Plaintiff or Defendant, one or more of Plaintiff or Defendant may authorize that their co-Plaintiff or Defendant do appear or plead or act for them. It is only in those circumstances that the attendance of such party can be excused.
7. This present case the borne of contention in the application dated 2nd April 2013 is indeed between the Plaintiff and the Objector. Is it correct as argued by the Plaintiff in that circumstance there is no obligation to serve that application on the Defendant? I answer in the negative. The Defendant is a party to the suit. At this stage the Court cannot predict how the arguments relating to that application will proceed and whether they will affect the Defendant. But the more fundamental reason for responding in the negative is because once a party is a party to a suit he remains such until the leave of the Court is sought. In this case the Plaintiff without seeking leave of the Court unilaterally decided not to serve the Defendant with the application dated 2nd April 2013. The interest of justice do not allow a party to decide which party of the suit to serve and which party of the suit to exclude from such service. Such power is reserved for the Court. To

- hold otherwise would be to invite tyranny in the law.
8. The Plaintiff having not sought the Court's leave to dispense with service of its Notice of Motion dated 2nd April 2013 is hereby required to effect such service before being heard on the same.

Orders accordingly.

Dated at Mombasa this 10th day of July, 2013.

MARY KASANGO

JUDGE

Dated and delivered this 15th day of July, 2013.

M. MUYA

JUDGE