



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 760 OF 2017 (OS)

IN THE MATTER OF THE ADVOCATES ACT

(CAP 16 OF THE LAWS OF KENYA

AND

IN THE MATTER OF APARTMENT NOS. A1, A2, A3, A6

AND C5 ON LAND REFERENCE NUMBER 205/93

HIRJI KHIMJI SEYANI.....1ST PLAINTIFF

KARSAN KHIMJI SEYANI.....2ND PLAINTIFF

=VERSUS=

WAINAINA IRERI & COMPANY ADVOCATES.....DEFENDANT

ACME APARTMENTS LIMITED.....THIRD PARTY

RULING

1. This is the notice of motion dated 5th December 2018 brought under Section 1A, 1B, 3A and 6 of the Civil Procedure Act, order 2 rule 15(b), (c) and (d). Order 11 rule 3(1) (b) of the Civil Procedure Rules.

2. It seeks orders:-

(1) That the suit/proceedings herein be stayed pending the hearing and determination of Nairobi Commercial Case No's 322 of 2016 and 127 of 2017.

(2) That the costs of this application be provided for.

3. The grounds are on the face of the application and are:-

1. There is pending before the high court two suits namely:-

(a) Nairobi Commercial Case Nos 322 of 2016; Seyani Brothers & Company Limited vs Acme Apartments Limited;

(b) Nairobi Commercial Case No. 127 of 2017; Acme Apartments Limited vs Deepak Krishna t/a Team 2 Architects & Bashir H. Hajeet t/a Harold R. Fenwich & Associates.

2. The plaintiffs are the proprietors (directors) of Seyani Brothers & Company Kenya Limited, which was the project contractor in respect of the development, of which the subject apartments herein are part. The suit above relates to alleged collusion, fraud misrepresentation and unethical/unprofessional conduct by the plaintiffs (project contractor), the project architect and the project quantity surveyor as a result of which the subject apartments were transferred to the plaintiffs and the architect who took

undue advantage of the third party.

3. The issues arising herein are so closely related or similar to those in the two suits listed above hence it will be appropriate and good use of judicial time and resources if this suit is stayed so that the main matter/issue in contention in those other suits and the outcome thereof is first determined, which will prevent any party from taking undue advantage over the other using court processes or multiplicity of suits.

4. The suit herein:-

(a) is scandalous, frivolous or vexatious,

(b) may prejudice, embarrass or delay the fair trial in Nairobi Commercial Case Nos 322 of 2016 and Nairobi Commercial Case No 127 of 2017.

5. It is in the interest of justice that this application be granted, to avoid multiplicity of proceedings, embarrassment of the judicial process and escalation of costs.

4. The application is supported by the affidavit of Bhupendra Ishwarbhai Patel, a director of the third party sworn on the 5th December 2018.
5. The application is opposed. There is a replying affidavit sworn by Hirji Khimji Seyani the 1st plaintiff herein sworn on the 28th January 2019. The defendant did not file any response to the application.
6. On the 24th January 2019, the court directed that the application to be disposed of by way of written submissions.
7. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit, the written submissions of counsel and the authorities cited. The issue for determination is whether this application is merited.
8. There is no doubt that there are two pending cases being Nairobi Commercial Case No.322 of 2016 and 127 of 2017. The issues in this suit are similar to those on the two cases. This fact has not been challenged by the plaintiffs/respondents.
9. I am guided by Section 6 of the Civil Procedure Act, order 2 rule 15(b), (c) and (d) of the Civil Procedure Rules 2010 and Article 159 of the Constitution in agreeing with the third party's position that this suit ought to be stayed pending the outcome of the other two cases.
10. The third party was enjoined in these proceedings because they a necessary party for the just resolution of the dispute herein. It is not prudent use of judicial time to have parallel proceedings in respect to the same issues between the same parties. The outcome of the other two suits may have a direct bearing of this suit.
11. I find merit in this application and grant the orders sought namely:-

(a) That the suit/proceedings herein are hereby stayed pending the hearing and determination of Nairobi Commercial Case No. 322 of 2016 and 127 of 2017.

(b) The costs of this application be borne by the third party.

It is so ordered.

Dated, signed and delivered in Nairobi on this 18TH day of JULY 2019.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Bundotich for the Plaintiffs

Ms Cheruiyot for Kabaiku for the Defendant

Ms Nzuki for Mr. Isindu for the Third Party

Kajuju- Court Assistant