

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CIVIL SUIT NO. 242 OF 2012

ALCOP LIMITED PLAINTIFF

=VERSUS=

MAKO ALI.....1ST DEFENDANT

AWALE TRANSPORTERS LIMITED2ND DEFENDANT

KENYA RAILWAYS CORPORATION.....3RD DEFENDANT

RULING

1. The 3rd defendant has raised a preliminary objection that this suit offends the provisions of section 6 of the Civil Procedure Act as there is a pending suit ELC case no. 99 of 2012 filed by the plaintiff Mr. Sitonik for the 3rd defendant contends that the issues in the earlier case are directly and substantially an issue as this suit as it relates to the same subject matter. The only differences is that there are two additional parties in this suit who ought to have been included in the earlier suit vide an amendment. He urged the court to strike out the current proceedings.

2. Mr. Koech in response placed reliance on the grounds of opposition filed on 14. 10. 14 and case law cited. The plaintiff admits the subject matter is the same except the current 1st and 2nd defendants were not parties to the earlier suit. He also stated that the court has no power to strike out the suit but may consolidate the two or stay one suit. Thirdly that this preliminary objection is an affront to the overriding objectives contained in section 1A & B of the Civil Procedure Act and article 159 of the constitution.

3. Section 6 of the Civil Procedure Act states thus;

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceedings is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

4. I have looked at the prayers sought in this suit and find them to be similar word for word to the prayers sought in the earlier suit no. HCC 9 of 2012. The plaintiff instead of filing a subsequent suit ought to have applied to amend to add more defendants if it so wished. The objection is thus merited as the matters in issue here is similar to the matters in issue in the earlier suit. The plaintiff argues that the orders this court can grant is to either consolidate the two suits or stay one as section 6 of the Act does not provide for striking out of the suit. I entirely agree with Mr. Koech on this but you can only make an order for consolidation or stay if such an order would serve a purpose.

5. As I stated earlier, the prayers sought in the two suits as contained by the pleadings on record is copy paste. There is no purpose that would be served by staying one or consolidating the two suits as the resulting decree that shall issue in either of them is the same. Although section 6 does not provide for

striking out of pleadings, this court's hands is not tied in instances where there is clear abuse of the court process such as this one. The plaintiff refers to article 159 of the Constitution to save this suit from being struck out. In article 159 (2) (b) states that justice shall not be delayed. Article 159 2 € the purpose and principles of this Constitution shall be protected. Section 1B (1) (c) of the Civil Procedure Act requires the efficient use of the available judicial and administrative resources.

6. By filing a similar suit other than breaching the provisions of section 6 of Civil Procedure Act, the plaintiff has also contravened the overriding objectives of the Civil Procedure Act by clogging the court system thus not using available resources efficiently. For this reason, I find this later suit an abuse of the court process and hereby strike it out with costs to the 3rd defendant

Dated and Delivered at Mombasa this 26th day January 2017

A. OMOLLO

JUDGE