



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT
AT NAIROBI
CAUSE NO. 2140 OF 2015
JANE FLORENCE ATIENO ONYANGOCLAIMANT
VERSUS
NAKUMATT HOLDINGS LIMITED.....RESPONDENT

M/s Mwangi for claimant/applicant

Mr. Nyaberi for respondent

RULING

The applicant, the claimant in 2140/2015, seeks consolidation of this suit with the following suits;

1. ELRC No. 2141 of 2015

Johnson Kibe Kamande vs Nakumatt Holdings Limited

2. ELRC No. 2142 of 2015

Anthony Macharia Kamau vs Nakumatt Holdings Limited

3. ELRC No. 2143 of 2015

Patrick Kahiko Gitu vs Nakumatt Holdings Limited

4. ELRC No. 2144 of 2015

David Ngungi Waweru vs Nakumatt Holdings Limited

5. ELRC No. 2145 of 2015

Eliud Kamau Nderitu vs Nakumatt Holdings Limited

6. ELRC No. 2146 of 2015

Musa Okoko Okechi vs Nakumatt Holdings Limited

7. ELRC No. 2147 of 2015

Joshua Maingi Kitavi vs Nakumatt Holdings Limited

8. ELRC No. 2148 of 2015

Thaddeus Bichange Machani vs Nakumatt Holdings Limited

9. ELRC No. 2149 of 2015

Samuel Kiratei Mwangi vs Nakumatt Holdings Limited

10. ELRC No. 2150 of 2015

Bernard Ombasa Makori vs Nakumatt Holdings Limited

11. ELRC No. 2151 of 2015

Johnson Wainaina Njenga vs Nakumatt Holdings Limited

12. ELRC No. 2152 of 2015

Rufas Gachunga Kiogora vs Nakumatt Holdings Limited

13. ELRC No. 2153 of 2015

William Musyimi Nyaga vs Nakumatt Holdings Limited

14. ELRC No. 2154 of 2015

Anthony Aketch Kondakonda vs Nakumatt Holdings Limited

15. ELRC No. 2155 of 2015

George Mburu Karanja vs Nakumatt Holdings Limited

16. ELRC No. 2156 of 2015

Daniel Maina Kariuki vs Nakumatt Holdings Limited

17. ELRC No. 2157 of 2015

David Mabiso Nyongesa vs Nakumatt Holdings Limited

18. ELRC No. 2158 of 2015

Stellah Kwamboka Nyakundi vs Nakumatt Holdings Limited

19. ELRC No. 2159 of 2015

Francis Nganga Njoroge vs Nakumatt Holdings Limited

The application is on the basis that the facts and legal issue that stand to be heard and determined in the 20 suits are similar and that it would be efficient and expeditious to consolidate the same.

The respondent is the same in all suits and was the employer of the claimants until they were suspended from duty on diverse dates in the month of March 2015 and were eventually dismissed from employment.

All claimants worked as cashiers at the respondent's stores and were all dismissed on allegations that they defrauded the respondent using its cash back system as cashiers at its various stores causing the respondent to lose money.

The claimants are represented by the firm of Ibrahim, Issack and Company Advocates who opted to file separate suits.

The application is opposed on the grounds set out in the respondent's submissions filed on 27th October 2016 as follows;

- a. The claimants are not the same even though the respondent is the same. The claimants were working in different branches of the respondent's company. The amounts each of them is claimed to have defrauded the company too are different and distinct. Thus each of them whether the cases are consolidated or not has to give evidence. This will be unfair to one court and delay justice for the claimant themselves in that they have to wait for all the claimants to be heard before their case is established.
- b. Secondly as indicated the claimants used to work with different branches of the respondent's company. To bring them to one court it means the respondent will have to summon at once all witnesses from various branches which is costly.
- c. Each claimant is making his or her specific claims which is not similar with the other claimant. Indeed it is because of this reason that the lawyers for the claimants wanted to file separate suit. The situation still obtains.
- d. The evidence to be adduced as to how each cashier effected the fraud is not similar. Each claimant executed the fraud in his own way hence the evidence to be adduced will be diverse.
- e. The advocates received instructions separately and at diverse times. It is only fair that those claims that were filed first should be heard.
- f. The overriding reason for consolidation of cases is to ensure expeditious resolution of the claim. How will this be achieved when all the claimants have to adduce evidence to establish their individual claims? To the contrary this is going to be a burden to the defendant to bring all witnesses at once instead of availing the relevant witness for each case.
- g. Besides the other crucial reason for consideration is where the facts are similar and the issues of law are the same. In as much as the main issue which led to the termination of the claimants is fraud, the facts are not similar. Each claimant is making individual claim, the amount defrauded is not the same and the relief sought is not the same on each claimant. In essence therefore, there are no common questions of facts or law.

The respondent prays that the application be dismissed with cost.

Rule 23 of the Employment and Labour Relations Court (Procedure) Rule 2016 provides;

“23 the court may consolidate suits if it appears that in any number of suits-

(a) Some common question of fact or law arises, or

(b) It is practical and appropriate to proceed with the issues raised in the suits simultaneously.”

In the case of **Law Society of Kenya –vs– The Centre for Human Rights and Democracy and 12 others (2014) eKLR**, the Supreme Court per Justice Smokin Wanjala and Lady Justice Njoki Ndung'u Judges of the Supreme Court stated;

“(3a) The essence of consolidation is to facilitate the efficient and expeditious disposal of dispute and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it nor was it intended to occasion any disadvantage towards the party that opposes it.”

I must hasten to say that consolidation in suitable cases ensures optimal utilisation of court’s time and is in keeping with the overriding objective provided in the Civil Procedure Act which is to facilitate the just, expeditious proportionate and affordable resolution of civil dispute.

In casu, the court would have to be satisfied that;

- (i.) There are common issues of fact to be determined in all the 20 cases.
- (ii.) There are common issues of law to be determined in all the 20 cases.
- (iii.) Consolidation of the 20 cases will not occasion any of the claimants or the respondent any undue advantage or disadvantage over the other.
- (iv.) That consolidation of the cases will occasion expeditious hearing and determination of the consolidated suits and therefore not only enhance dispensation of justice to the parties but also would result in optimal utilisation of court’s time and resources.

Having considered the submissions by the parties herein, the court is satisfied that the application has met the aforesaid requirements and directs the following;

- (a) That all the 20 suits named herein are hereby consolidated.
- (b) That cause no. 2140 of 2015 be the lead file
- (c) All the 20 cases be placed together for hearing and determination by the same judge and a date for pre-trial conference be obtained by the parties.
- (d) Costs in the cause.

Dated and delivered at Nairobi this 21st Day of April 2017

MATHEWS NDERI NDUMA

PRINCIPAL JUDGE