



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL. 1034 OF 2005

AHMED DOLAL & 2 OTHERS
PLAINTIFFS

VERSUS

KENYA ELECTRICITY GENERATING COMPANY LIMITED & ANOR
DEFENDANTS

Coram : **Mwera J.**
 Ogeto for Plaintiff
 Onono N/A for 2nd Defendant
 Njeru for 1st Defendant
 Njoro court clerk

RULING

On 08/2/11 the plaintiffs filed a motion under Order 45 rule 1 of the Civil Procedure Rules and section 80 of Civil Procedure Act for an order:

- i) that the court's order of 25.5.09 be reviewed and set aside.

This was on the ground that the applicants had their lawyer M/s Khamati Minishi & Co Advocate who in 2005 had amended the plaint herein in which the applicants claim damages due to oil spillage onto their farm from the establishment of the defendants. That firm of lawyers told the applicants that the amended plaint would be served for further proceedings. Such was not done and the defendants filed an application to dismiss the suit. M/s Khamati Minishi did not respond to the application and they did not contact the applicant's on the same. When it came up for hearing it was allowed – hence this application. It was no mistake of the applicants to get into this state of affairs and so their prayer should be granted. The 1st plaintiff (Ahmed Dolal) swore an affidavit in support.

This application came for hearing on 8/2/11 but it was adjourned to enable the applicants to serve the respondents lawyer Mr. Onono at Garissa. When that was done, come 2.3.11 the respondent's lawyer did not show up and the applicants submitted on the application more or less on the same lines as was stated in the affidavit to the application. It was reiterated that the oil spillage complained of was continuously present on the plaintiffs' property doing damage. Reinstating their suit which Khamoni J dismissed on 25/5/09 on the application of the 2nd defendant, will give opportunity to have their matter dealt with.

Having considered the above and that the applicants appear not to be those to blame in the proceedings leading to the orders of 25/5/09, and that the defendants have not opposed the present motion, orders are granted as sought. The plaintiffs have 45 days to prepare this suit as per Civil Procedure Rules 2010 for trial.

Delivered on 5/4/11.

J. W. MWERA
JUDGE