



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL DIVISION
HIGH COURT CIVIL SUIT NO. 152 OF 2005

PAUL MUTHAMA & 400 OTHERS..... PLAINTIFF

V E R S U S

SOCFINAF COMPANY LIMITED..... DEFENDANT

R U L I N G

The Plaintiffs in this suit (and there are 401 of them) brought this suit by plaint filed on 11th February, 2005. They pleaded that on 24th November (the year is not given) the **Industrial Court** awarded all the employees of the Defendant a wage increase of 18% “to be divided equally at 9% for all unionisable employees and be spread of over two years with effect from 18th January, 2001 and 31st December, 2002”. The main relief they seek is a declaration that the Defendant is liable to settle the Industrial Court award.

It is not immediately discernable why this suit is filed. The procedure for enforcement of Industrial Court awards was at the material time, and I believe still is, a much simpler one. That procedure, as far as I can recall it, is by way of application to the High Court for adoption of the Industrial Court award as a decree of the court.

Be that as it may, the last time that the suit was actively before a judge was on 14th March, 2007 for hearing of **chamber summons dated 10th January, 2005** (filed together with the plaint) which sought an order that the 1st Plaintiff be allowed to bring a representative suit on behalf of 400 other persons. The application had been brought under **Order 1, rule 8** of the old **Civil Procedure Rules. Sub-rule (1)** of the rule provided as follows:-

“ Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued, or may be authorised by the court to defend in such suit, on behalf of or for the benefit of all persons so interested.”

It was apparently agreed before Khamoni, J that no authority **to sue** is required under that rule, and that only authority **to defend** on behalf or for the benefit of all persons interested is required. The application was therefore withdrawn. The court further directed as follows:-

1. That the Plaintiff do comply with Order 1, rule 8(2)
2. That the Plaintiff be at liberty to file an amended plaint to annex the award of the Industrial Court.

Sub-rule 2 of rule 8 provided as follows:-

“2. The court shall in such case direct the plaintiff to give notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.”

As it happened, the Plaintiff never gave notice of the institution of the suit under sub-rule 2 quoted above. But to be fair to him, the court did not direct specifically the manner of service of such notice as it ought to have done under the said sub-rule. The Plaintiff also never filed amended plaint.

The Defendant then applied by **notice of motion dated 9th February, 2011** seeking dismissal of the Plaintiff's suit for want of prosecution under **Order 17, rule 2(1) and (3)** of the new Civil Procedure Rules. That application was filed on 14th February, 2011. As the last activity in the suit was on 14th March, 2007, the delay we are dealing with here is **nearly 4 years**.

What is the Plaintiff's explanation for that delay? It is as contained in the replying affidavit filed on 11th April, 2011 as follows:-

- That the Plaintiffs stay far and apart and that trying to organise a meeting in order to involve all of them is a Herculean task.
- That additionally some of the Plaintiffs have since died and their families are yet to file papers in court in order to represent their estates.

That is the extent of the explanation. It is an explanation I cannot accept at all. Four years is a long time to wait to do anything to move the suit forward. Litigation must come to an end; a suit cannot remain in the records for ever.

I have already alluded to the possible incompetence of the suit. It will be best that it be removed from the records of the court.

Having considered the respective submissions of the learned counsels appearing, I will allow the application. This suit is hereby dismissed for want of prosecution with costs to the Defendant.

It is so ordered.

DATED AT NAIROBI THIS 30TH DAY OF JUNE, 2011

**H.P.G. WAWERU
JUDGE**

SIGNED AND DELIVERED THIS 1ST DAY OF JULY, 2011