

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 6301 of 1990

GITHURAIN TING'ANG'A COMPANY LIMITED.....PLAINTIFF

VERSUS

STEPHEN KIMANI KAHUNYO.....DEFENDANT

RULING

There is an application by way of Chamber Summons under order VIA Rule 3 and Order I Rule 10(2) of the Civil Procedure Rules for leave to strike out the name of the plaintiff herein Githurai Ting'ang'a Company Limited and substitute the names of the applicants herein as plaintiffs.

The other order sought is for leave to be granted to amend the plaint in accordance with the draft annexed to the application. The application is opposed by the defendant who has raised a preliminary objection to the effect that the plaintiffs' advocates are not properly on record and that the suit has abetted.

Both learned counsel have made their submissions which I have on record. The plaintiff in this suit is a Limited Liability Company which has been dissolved. It is common knowledge that the said company has been dissolved but the applicants' state that the law allows them to be substituted in place of the said company.

I have considered the legal position as advanced in opposition to the said application. Section 340 of the Companies Act Cap 486 Laws of Kenya provides as follows:

“340. Where a company is dissolved, all property and rights whatsoever vested in or held in trust for the company immediately before its dissolution (including leasehold property but not including property held by the company in trust for any other person) shall, subject and without prejudice to any order which may at any time be made by the court under Section 338 or section 339, be deemed to be *bona vacantia*, and shall accordingly belong to the Government.”

The plaintiff company herein was dissolved on 29th May, 2009 vide copies of Kenya Gazette dated 17th April, 2003 and 19th May 2009. By virtue of powers donated by Section 339, of the Company's Act aforesaid the name of the plaintiff was struck off by the Registrar from the register of companies.

A suit is an asset or property belonging to the company. After dissolution of the said company the suit must have abetted and or must be taken over by the Government in line with Section 340 of the Companies Act aforesaid. The intended plaintiffs are not the Government neither are they acting on its behalf or the Attorney General. I am persuaded that the Preliminary Notice of objection must succeed and therefore the application dated 5th February, 2010 is hereby dismissed with costs to the defendants.

Orders accordingly.

Dated, signed and delivered at Nairobi this 21st day of September, 2010.

A. MBOGHOLI MSAGHA

JUDGE