



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Civil Case 16 of 2004

THOMAS KIBE & 114 OTHERSPLAINTIFF

VERSUS

KENYA PORTS AUTHORITYDEFENDANT

R U L I N G

The plaintiffs herein, took out a notice of motion dated 17.11.2008 under order XIV rule 2 of the Civil Procedure rules in which it sought for the follow directions interalia:

(a) *That this honourable court be pleased to direct that the following points of law be raised for the court to give opinion on the same in such manner as the court thinks expedient pending the taking of evidence on the remaining questions and issues of fact, that is to say:-*

(i) *What are the terms in the Staff Regulations that are applicable to the dispute of land? Has the defendant breached the said regulations? Are the plaintiffs entitled to payment for an extra hour worked under the Staff Regulations? Are the plaintiffs exempt from payment of overtime under the Staff Regulations?*

(ii) *Is the plaintiffs claim statute barred by virtue of Section 66(b) of the Kenya Ports Authority Act?*

The motion is supported by the affidavit of Thomas Kibe sworn on 18th November 2008. When served, Kenya Ports Authority, the defendant herein filed a replying affidavit to oppose the motion.

It is the submission of the plaintiffs' counsel that since learned advocates in this suit have filed their agreed issues then it is necessary for directions to be given as to how the questions would be determined in view of the numerous number of plaintiffs. The defendant is of the view that the motion should be dismissed because the same is premature as the facts have not been agreed upon. It is also stated that documents have not been discovered. It is the defendant's view that parties be allowed to file and exchange documents before directions can be given. The plaintiffs' counsel is of the firm view that the parties have exchanged all the documents they will rely on this matter hence the defendant's submissions cannot stand.

I have considered the submissions made by learned counsels from both sides. I have also considered the grounds set out on the face of the motion and the facts deponed in the affidavits filed for and against the motion. It is not in dispute that the learned advocates appearing in this matter have filed the agreed

issues. This court has now been urged by the plaintiffs' counsel to give directions under order XIV rule 2 of the Civil Procedure rules. The aforesaid rule provides as follows:

“If it appears to the court that there is in any suit a question of law which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the court may make an order accordingly, and may direct such question of law to be raised for the opinion of the court in such manner as the court thinks expedient; and all such further proceedings as the decision on such question of law may render unnecessary may thereupon be stayed”.

It is clear from the aforesaid provision that the court retains a wide discretion to give directions to decide on a question of law which is apparent from the suit before the suit proceeds for trial. This is basically done if it would be convenient to avoid delay at the trial. After anxiously considering the material placed before me and the submissions of learned counsels I am satisfied the motion is well founded. I direct the plaintiffs to file and serve a formal application seeking for the determination of the issues set out in paragraph 2 of the motion dated 17.11.2008. the application should be supported by an affidavit annexing all the necessary documents. The defendant to file grounds of opposition and or replying affidavits in opposition if any. All proceedings in this matter shall remain stayed until the aforesaid application is heard and finalized. To avoid the matter delaying further I direct the plaintiffs to comply with the directive within 21 days from the date hereof and the defendant to file its responses within 21 days from the date of service of the application. Mention on 28/05/2009 to confirm whether or not the directive has been complied with. Costs to be in the cause.

Dated and delivered at Mombasa this 8th day of April 2009.

J. K. SERGON

J U D G E