



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Suit 61 of 2004

ELTEX SACCO LIMITED PLAINTIFF

VERSUS

RIFT VALLEY TEXTILES LIMITED 1ST DEFENDANT

RAPHAEL MASINDE 2ND DEFENDANT

R U L I N G

This is an application under the provisions of Order 1, Rules 10 (2) and 22 and Order VIA Rules 3 and 8 of the Civil Procedure Rules for the following orders:-

- (i) That John Chrys Otieno be joined as a Plaintiff in this case.
- (ii) That the Plaint be amended accordingly and the draft amended Plaint be deemed as properly filed and served subject to payment of the requisite Court fees.
- (iii) That the cost of this application be in the cause.

The suit was filed in the year 2004. On 30th December, 2005 the Plaintiff was placed under liquidation under the provisions of the Co-operative Societies Act, 1997 by the Commissioner for Co-operative Development.

On 18th June, 2008 this Court granted an Order for leave that this suit continue or proceed for hearing while the Plaintiff was under such liquidation. The initial liquidation was for one year but the process was not concluded within the one year.

The Commissioner for Co-operative Development subsequently on 19th September, 2008 extended the period of liquidation for a period of one year from 19th September, 2008.

Under Section 66 of the Act, the Liquidator of a Co-operative Society whose registration has been cancelled has powers to institute and defend suits and other legal proceedings by and on behalf of the Society.

The Liquidator of the Plaintiff wants to be joined in the suit so that he may continue with the prosecution of the suit for the Society.

The Defendant is opposed to the application on the main ground that the aforesaid extension order is without merit and is based on an extension order that is invalid. Also that the Commissioner for Co-operative Development had no authority to extend an appointment which has already expired.

I have considered the application, grounds of opposition and the submissions by Counsel. The appointment of the Liquidator and the extension of appointment of the Liquidator Mr. John Chrys Otieno was done by the Commissioner for Co-operative Development under the provisions of the Co-operative Societies Act 1997. He did so exercising a statutory power and exercising his discretion. The Order is valid and in force unless it expires or revoked by the Commissioner or by a Court of Law, say by way of judicial review proceedings or otherwise.

The said Order cannot be challenged within these proceedings.

With regard to the other merits, I am inclined to enjoin the Liquidator as a Plaintiff in this suit so that he may prosecute the suit on behalf of the Plaintiff.

I hereby do allow the application dated 9th March, 2009. Costs shall be in the cause.

DATED AND DELIVERED AT ELDORET ON THIS 25TH DAY OF MAY, 2009.

M. K. IBRAHIM

JUDGE

In the presence of:

Mr. Manani for the Applicants

No appearance for the Respondents

Applicants present