



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Suit 210 of 2007

GEDEON CHACHA KAMUNO.....PLAINTIFF

VERSUS

KENYA GUARDS AND ALLIED WORKER UNIONDEFENDANT

AND

SAMSON WANJALA MATETE

THROUGH

KENYA NATIONAL PRIVATE SECURITY WORKERS UNION.....INTERESTED PARTY

RULING

Before embarking on the writing of this ruling, the court, scribed through the record and noted a number of procedural errors committed by both the litigants herein as well as the court. This has thus necessitated the setting out of the transactions on the record in extensor.

The background information to this ruling on the preliminary objection raised herein is that, the plaintiff Gideon Chacha Kamuno moved to this court, by way of a plaint dated 28th day of February 2007. The suit was filed against Kenya Guards Allied Workers Union. The salient features of the same for purposes of the record are as follows:-

-Vide paragraph 2 thereof, that the defendant is a Union of Allied Workers with the Registrar of Trade Unions and has its offices in Nairobi and elsewhere in the Republic of Kenya.

- Vide paragraph 3 that on or about 13th May 2006 the defendant purportedly conducted the elections at Machakos town to fill the position of National Executive Committee members.

-Vide paragraph 4 thereof, that the said general elections were flawed by irregularities and that the members there, did not follow the defendants constitution which require that the notice be given to branch members before the National Executive elections are held.

-Vide paragraph 5 that the constitution of the defendant requires that the delegates be appointed from Branches to participate and as such the elections were not fair as they were done secretly by a few.

-Vide paragraph 6, that as a consequent of the said irregular elections, objection were raised at the Registrar of Trade Unions and that the defendant is not properly run. In consequence of the aforesaid

complaints the plaintiff sought the following reliefs:-

(a) Dissolution of the National Executive Committee of the Respondents and allow free and fair elections to be held within 21 days of the orders of the court.

(b) The above orders of the Honourable court, be served upon the Registrar of Trade Unions, District labour officers and the Branch Manager KCB, KICC Branch for compliance.

(c) The defendants to pay the costs of this suit.

Simultaneously with the suit was filed an interim application by way of a chamber summons' brought under order XXXIX rules 1,2,3 and 9 of the CPR and section 3A of the CPA and all other enabling provisions of the law. Six reliefs were sought namely:-

- 1. That this application be certified urgent and be heard in the 1st instance.*
- 2. The elections of the National Executives purported to have been conducted at Machakos on the 13th May 2006 and elsewhere thereafter be nullified to allow fresh elections as ordered by this Honourable court.*
- 3. The National Executive of the Respondent be dissolved and free and fair elections be ordered by the Honourable court, within 21 days of the orders of the court, to be open to all delegates to avoid objections later.*
- 4. This order of the court, be served upon the Registrar of Trade unions District labour officer and the Branch Manager of KCB, KICC Branch for compliance within 7 days of this order.*
- 5. The party elected National Executive members to commence their five year term immediately after compliance by the Registrar of Trade Unions.*
- 6. The O.C.S. Kamukunji police station do supervise the handing over of the new office.*

A perusal of the court, record reveals that on the 14/3/07 parties appeared before Khamoni J for the hearing interparties of the said application, and the same is indicated to have been granted by consent.

There is a memo of appearance dated 13th day of March 2007 and filed on 14th day of March 2007, meaning that as at the time the said consent was entered into, the defendants had locus standi to enter into the same.

There is a copy of an extracted order of the said consent extracted on the 16th day of March 2007 in the following terms:-

- 1. That the election of the National Executive purported to have been conducted at Machakos on the 13th May 2006 and elsewhere thereafter be and is hereby nullified to allow fresh elections as ordered by this court.*
- 2. That the National Executive of the Respondent be and is hereby dissolved and free and fair elections be held within 21 days of the orders of the court, and to be open to all delegates to avoid objections later.*
- 3. That this order of the court, be served upon the Registrar of Trade Union District Labour officers and the Branch Manager of KCB KICC Branch, compliance within 7 days of this order.*
- 4. That the newly elected National Executive members to commence their five year terms immediately after compliance by the Registrar of Trade Union.*

5. *That the OCS Kamukunji Station do supervise the handing over of the new office.*

There is an application on the record dated the 6th day of April 2007. It is brought by way of notice of motion under order XLIV order L rule 1 order XXI rule 22 of the CPR, section 80 and 3A of the CPA cap 21 laws of Kenya, and all other enabling provisions of the law. It is indicated to have been brought by J.A. Guserwa and Company advocates for the applicants. But it does not indicate whether it is the plaintiff or the defendants who are the applicants. The orders sought by them are as follows:-

1. *The matter be certified urgent and heard ex-parte in the first instance.*
2. *That pending the inter partes hearing and final determination of this application, there be stay of execution of the consent orders issued on 14th March 2007.*
3. *This honourable court, be pleased to review and set aside the consent orders recorded herein on 14th March 2007 and as extracted by this Honourable court order on 16th March 2007.*
4. *In the alternative and without prejudice to the above, this Honourable court, in exercise of its inherent powers be pleased to set aside the consent orders recorded on 14th March 2007 and the orders there to issued on 16th March 2007.*
5. *Costs of this application be provided for.*

The application was filed on 10th April 2007 and filed on the same date. Since it was under certificate of urgency, it went before Mutungi J as he then was (now rtd) and his Lordship granted the orders which were extracted on the same 10th April 2007 as follows:-

1. *That this matter be and is hereby certified urgent and is heard exparte in the 1st instance and the main application be heard interpartes during the current vacation.*
2. *That pending the interpartes hearing and final determination of this application, there be a stay of execution of the consent order issued on 14th March 2007.*
3. *That the application for review be heard by the Hon. Khamoni J.*
4. *That this file be placed before the Honourable Justice Khamoni on 18th April 2007 for further direction.*
5. *That cost of this application be in the cause.*

There is also on record an application by way of chamber summons dated 10th of April 2007 and filed on 12th April 2007. It is brought under order 1 rule 10 and 22, XLVI rule 1 of the CPR and section 3A of the CPA cap 21 laws of Kenya. It sought 7 prayers namely:-

1. *That the application be certified urgent and be heard exparte in the first instance.*
2. *That pending the hearing and determination of this application, this Honourable court, be pleased to order a temporary stay of execution of this Honourable courts' orders made on 14th March 2007.*
3. *That the applicants can be joined as defendant in this suit.*
4. *This Honourable court, orders issued herein on 14th March 2007 be set a side.*
5. *The plaintiff/respondents' application dated 28th February 2007 be set down for hearing on its own*

merit, on such dates as this Honourable court, may deem fit and just to direct.

6. This Honourable court, be pleased to issue such orders as it may deem fit and just to grant.

7. That costs of this application be provided for.

There is on record a strange replying affidavit deposed by one John Nyakwara Nyaata deposed on 7th May 2007 and filed on the 8th May 2008. This was followed by a preliminary objection dated 1st May 2007 and filed on 4th May 2007.

There is also on record an application brought under section 3A of the CPA and all enabling provision of the law. It is dated 27th day of July 2007. It is presented by advocate for the plaintiff/applicant. 9 prayers were sought namely:-

1. That this application be certified urgent and heard in the first instance.

2. That pending the hearing and determination of this application Daniel Ngirimani and his purported delegates be stopped by the order of this Honourable court, from dissolving the Kenya Guard and Allied Workers union.

3. That pending the hearing and final determination of the application dated 6th April 2007, the deponement of the said application Daniel Aduvuga Ngirimani be investigated by the Directors of C.I.D for giving false information to the Registrar of Trade Union. That Samson Oketch, who died and was booked at the city mortuary on the 23rd July 2006 was present to elect him as secretary General of Kenya Guards and Allied Workers Union on 25th October 2006.

4. That upon the findings that Samson Oketch was dead at the time Daniel Aduvuga Ngirimani was elected into office as General Secretary of Kenya Guards and Allied Workers Union, Daniel Aduvuga Ngirimani be arrested and charged for perjury and giving false information to both the Registrar of Trade Unions and the court, in both HCCC NO. 748 of 2006 and the present case by the Affidavit sworn there to.

5. The interim orders obtained hereto by the Respondent be stayed pending the investigation by the Director of investigation to confirm that Samson Oketch, was dead as at the election of Daniel Aduvuga Ngirimani were conducted on the 25th October 2006 at Rock Martees Kisumu.

6. The Respondent Daniel Aduvuga Ngirimani be ordered to refund the Kenya Guards and Allied Workers Union all the money drawn from the account of Kenya Guards and Allied Workers Union or any other account allied to the Union.

7. There be an order directing the Banking fraud investigation department unit to investigate the diversion of cheques due to Kenya Guards and Allied Workers Union to other non designated account contrary to the Rules of the Union and be charged accordingly.

8. The Honourable court, do order and direct Daniel Aduvuga Ngirimani not to dissolve the Kenya Guard and Allied Workers Union as his election to the office is challenged.

9. There be an order by the Honourable court, directing that all the sums diverted previously be returned to the Kenya Guards and Allied Workers Union.

On 5th October 2007 two counsels appeared herein namely a Mr. Ogeto indicated as appearing for the plaintiff, and a Mr. Babu indicated as appearing for the Respondent. They entered a consent on the following terms:-

1. There be an order renouncing the change of the Respondents name Kenya Guards and Allied

Workers Union into Kenya National Private Security Workers Union.

2. *There be injunction restraining the officers, servants or agents of the Kenya National Private Security and Allied Workers Union from trespassing, interfering, and recruiting the members of Kenya Guards and Allied Workers Union to Kenya National Private Security Workers Union (interms of prayer 9)*
3. *The Registrar of Trade Union be compelled to effect the changes of the officers, Trustees and committee members of the head office who were voted in through the consent order in HCCC NO. 210/2007 at webs Hotel in Kisii on the 24th March 2007.*
4. *The Respondents do pay costs of the application”*

The endorsement of the said court, orders prompted the filing of an application by way of notice of motion dated 25th October 2007 and filed on the 29th day of October 2007. It is brought under order XLIV order L rule 1, order XXI rule 22 of the CPR and section 80, section 3A of the CPA cap 21 laws of Kenya and all other enabling provisions of the law. It seeks 5 orders:-

1. *This mater be certified urgent and heard exparte in the first instance.*
2. *That pending the inter-partes hearing and final determination of this application there be stay of execution of the consent orders issued on 5th October 2007.*
3. *This Honourable court, be pleased to review and set aside the consent orders recorded herein on 5th October 2007 and issued by this Honourable courts’, order on 8th October 2007.*
4. *In the alternative and without prejudice to the above, this Honourable court, in exercise of its inherent powers be pleased to set aside the consent orders recorded on 5th October 2007.*
5. *Costs of this application be provided for.*

The application is alleged to have been presented by J.A. Guserwa and company advocates who is the advocate of the applicants.

There is a notice of change of advocates filed by one Wilfred K.Babu allegedly taking over from the firm of M/S/ J.A. Guserwa. It is dated 4th day of October 2007 and filed the same date.

On 1/11/07 counsels appeared before this court, and M/S Guserwa informed the court, that she was a stranger to the counsels who had entered a consent on behalf of the defendants for whom she was acting. The court, stood over the matter to another date to enable the incoming counsel attend court, to confirm the origin of his representation.

During the pence of that appearance and confirmation of the representation is when was filed a preliminary objection to the application dated 24th October 2007. The preliminary objection is dated 13th day of November 2007 and filed the same date. It raises one ground namely:-

The application is not supported by a proper affidavit and the affidavit annexed there is a false one, which affidavit had been deponed by one Alloyce O. Thomas describing himself as the duly registered secretary General of the defendant union now known as Kenya National Private Security Workers Union. The record reveals that the preliminary objection was canvassed before Waweru J on 5/12/08 culminating in a ruling delivered on 23rd day of January 2008 dismissing the preliminary objection because the same was based on facts which were indispute.

What followed the ruling on the preliminary objection is a written consent entered between J.O Onyancha for the plaintiff and Wilfred K.Babu for the defendant. The same was entered by the Deputy Registrar on

16/2/2009 and signed on the 15th day of February 2009. It runs as follows:-

(i). *That the name of the Trade Union shall be and will hereby remain “Kenya Guards and Allied Workers Union” as registered and shall not be changed, altered or interfered with by any other Trade Union or persons whatsoever.*

(ii). *That a permanent injunction be and is hereby issued restraining the officials, employees, and/or agents of Kenya National Private Security Workers union” from interfering, trespassing impersonating, possessing any property, collecting itself, or otherwise using the name of Kenya Guards and Allied Workers Union in making any contract or collecting Union dues from any company, organization or individual persons whatsoever.*

(iii). *That the Head office officials, Trustees and Committee members of Kenya Guards and Allied Workers Union elected on 24th March 2007 at Webs Hotel Kisii be and are hereby declared and mandated as the only Bonafide Trade Union officials and shall remain in office for a term of five years from the date of filing this consent in accordance with the provisions of the constitution of Kenya Guards and Allied Workers Union.*

(iv). *That the Registrar of Trade Union be and is hereby restrained, from making any kind of change of head office officials, trustees and committee members for the period of five years commencing from the date of filing this consent, otherwise than when the official, trustee or committee members, dies, resign or leaves the Trade Union to another or retires and the Union commence a replacement or save as provided in the union constitution.*

(v). *That the Registrar of Trade Union be and is hereby served upon with the consent and order for compliance.*

(vi). *That the Bank account of Kenya Guards and Allied Workers Union be and is hereby declared to be “Kenya Commercial Bank KICC Branch Harambee Avenue A/C NO. 233652860 the Gazetted Bank Account.*

(vii). *That the defendant shall pay the plaintiff in full satisfaction of his claim, for cash, Kenya shillings three hundred and sixty thousands (Kshs. 360,000/=) only and this matter shall be deemed to have been terminated by this consent. This consent made at Nairobi this 02 days of February 2009.*

Signed advocate J.A Onyancha for the plaintiff signed by Advocate Wilfred K.Babu for the defendant”

There is a notice of change dated 02 day of February and filed on the 11th day of February 2009. There is an application dated 17th day of March 2009 filed by one Thomas Ochieng Alloyce describing himself as secret ary general K.N.P. S.W. Union. It was filed the same date, by way of notice of motion brought under order XLIV order L rule 1 order XXI rule 22 of the CPR and section 80, section 3A of the CPA cap 21 laws of Kenya and all other enabling provisions of the law. It seeks the following orders:-

1. This matter be certified urgent and heard exparte in the first instance.
2. That pending the interpartes hearing and final determination of this application there by stay of execution of the consent orders issued on 16th March 2009.
3. This Honourable court, is pleased to review and set aside the consent orders recorded on 16th March 2009 and issued by this Honourable courts’ order on 16th March 2009.
4. In the alternative and without prejudice to the above, this Honourable court, in exercise of its inherent powers is pleased to set aside the consent orders recorded 16th March 2009.

There is a notice to act in person dated 18th day of March 2009 and filed the same date by one Thomas

Ochieng Alloyce, secretary general K.N. P.S.W. Union. There is another application dated 19th day of March 2009 and filed the same date under certificate of urgency, brought under order III, rule 9A, order XLIV rule 1, order 21 rule 22 and section 3A of the CPA cap 21 laws of Kenya and all enabling provisions of the law. Five prayers are sought:-

1. *That due to the urgency of this matter service of the application upon the plaintiff be dispensed with and the same be heard exparte at the first instance.*
2. *That leave be granted to the defendant/applicant to act in person through its secretary General, one Thomas Ochieng Alloyce as per the resolution of National Execution Committee meeting held on 15th March 2009.*
3. *That the consent order recorded in this court, on 2nd day of February 2009 and filed on 11th day of February 2009 and orders issued on 16th day of March 2009 be set aside forthwith and there be a stay of execution as a result thereof.*
4. *That by an order of this court ,the Registrar of Trade Union be and is hereby ordered not to alter and or any way change the names of the Registered officials as per his record in pursuant to the said consent order issued on 16th day of March 2009 as per the extract dated 27th July 2007.*
5. *That cost of this application be provided for.*

On the same 19th day of March 2009, the same Thomas Ochieng Alloys filed a notice withdrawing the application dated 17th day march 2009. It is filed on the 20th day of March 2009.

There is yet another application brought by way of chamber summons dated 26th day of March 2009 and filed on 27th March 2009. It is presented by the same Thomas Ochieng Alloyce, Secretary General of the defendant/applicant. It is brought under order XXXIX rule 2 and section 3A of the CPA cap 21 laws of Kenya and all other enabling provisions of the law. It seeks 3 prayers namely:-

1. *That due to the urgency of this matter, service of the application upon the plaintiff be dispensed with and the same be heard exparte at the first instance.*
2. *That a temporary order of injunction do issue against the plaintiff, his agents, associates and any persons whomsoever restraining them from alienating holding themselves out and or carrying out any functions of the defendant/applicant pending the hearing and determination of the defendant/applicants application dated 19th March 2009 and scheduled for inter partes hearing on the 7th may 2009.*
3. *That cost of this application be provided for.*

The consent earlier on referred to herein was adopted by Visram J as he then was (now JA) on the 16/3/09 and extracted on 17th day of March 2009 and filed the same date.

On the 27th day of March 2009 Wilfred K. Babu and company advocates describing himself as counsel for the defendant, filed a preliminary objection on the same date of 27th day of March 2009. It lists five grounds namely:-

1. *That the applicant lacks capacity to bring the chamber summons/ or any suit against the defendant in the first instance.*
2. *That the Act of the applicant is an abuse of the process of law before the Honourable court.*
3. *That the applicant has not indicated the nature and manner of his representation in this suit.*

4. *That the defendant, shall seek the applicant to produce before the Honourable court, the certificate of Registration of Kenya National Private Security workers union KM.P.SW.U. from the Registrar of Union.*

5. *That the applicants chamber summons is misplaced and that it should be dismissed with costs.*

Lastly there is also another chamber summons brought by way of a chamber summons dated 2nd June 2009 and filed on the same date. It has been presented by one Samson Wanjala Matete for the Kenya National Private Security Workers Union. It seeks 5 payers namely.

1. *That this Honourable court be pleased to hear this matter exparte.*

2. *That this Honourable court, be pleased to grant leave to allow the interested party join the suit be enjoin.*

3. *That this Honourable court be pleased enough to set a side consented orders dated 8th October 2007 and 17th Mach 2009 which had been imposed on the interested party who were not party into the said agreement.*

4. *That this Honourable court, be pleased enough to grant temporary injunctions to restrain the plaintiff and the defendant into this matters from interfering with the members of the interested party.*

5. *That costs be provided for.*

The fore set out notwithstanding, the preliminary objection dated 17th March 2009 and filed on the 27th March 2009 was canvassed interparties on 08/07/09. The salient features of the objectors grounds are as follows;-

-The objector in law is a duly registered union, with executive officials duly recognized by the registrar of Trade Unions, who has communicated that position to all the members. Thus validating the position of the objector union.

-The objector union has filed a consent between itself and the plaintiff.

-In the absence of the applicant herein whose application is being objected to having, obtained leave to join the proceedings either as a party or as an interested party, he cannot present any application herein.

-It is their stand that after filing the consent order herein, the matter is terminated more so when it is not known which people it represents.

-It is their stand that the several applications filed herein is nothing but abuse of the due process of the court.

-Maintain that the parties objected to there violated the provisions of section 12 and 23 of the Trade Union Act.

-There is no certificate issued under section 27 of the Act to show that there is change of name of the union.

-It is their stand that applicants have no right to challenge the consent order filed herein and the court, is invited to be guided by the order from the Indus trial court case No. 7/2002 which was dismissed for want of registration of the parties who had presented it. Further a settlement of the said union was challenged by way of judicial review in JR 187/2008 and prohibition issued against the minister prohibiting him and any other person acting on his behalf from recognizing the would be union.

Mr. Onyancha J did not oppose the application. Whereas Mrs. Guserwa on behalf of the applicant of the notice of motion dated 17th March 2009 opposed the preliminary objection on the following grounds.

-The purported defendant does not exist. The certificate shows that the Kenya Guards and Allied Workers Union registered on 2/9/99 had changed its name to the Kenya National Security Workers Union on the 20th day of July 2007, which change was duly registered by the registrar of Trade Unions on 26th July 2007 and duly Gazetted by Kenya gazette of 3/8/07, which changes were effected under section 22 of the then Trade Union Act then in force under which there was no provision for the reissuing of another certificate.

-Content that the requirements of section 27 of the labour relations Act have no application to the matter in issue herein.

-Since Kenya Guards and Allied Workers Union ceased to exist in law on 3/08/07, it has no legal capacity to agitate any legal proceeding.

-Content that the letters from the registrar which are being relied upon by the objector cannot oust the importance of the Kenya Gazette gazetted the change of name.

-Concede that indeed JR187/08 was filed by the objectors seeking to degazette the gazetement of the new union but contend that these proceedings are in consequential as they were initiated by a party without legal standing. Whereas the issues in cause No. 70/02 filed in the industrial court, were not determined on merit as the action was dismissed due to non attendance. This being the case, as long as the Kenya Private Security Guards Union remains so gazetted, it is the only lawful mandated union to represent the interests of the members in the security in disputing.

-Maintains the union was entitled to come to court, to challenge the court orders filed herein. They first moved to this court, to challenge the consent order which had been made herein on 5/10/07 but before it was heard, on that application, another consent was filed by the plaintiff and the objector. On that footing the court, was asked to dismiss the preliminary objection filed herein.

In response to that opposition, counsel for the objector added that there are only two parties on board, namely the plaintiff, and the defendant, and in the absence of an amendment to the pleadings, there is no way an interested party can be a party herein. It is their stand that a gazette notice is not a legal document, as its purpose is simply to inform the public of the existence of the registration.

Due consideration has been made of the rival arguments herein and the court, is satisfied that the arguments have been presented on two fronts, namely the technical front and the merit front. The technical front arises from the allegations levelled by either side as regards lack of competence to prosecute or participate in the proceedings herein. Whereas the merit aspects arise from the arguments as to whether the preliminary objection, is sustainable or not.

There is also a 3rd aspect which arises from the discovery of the existence of irregularities and procedural errors committed by all the stakeholders herein inclusive of the court, which go to the root of the proceedings, and if upheld will have the effect of terminating the proceedings. The above being the case, the court, has decided to deal with the issue of irregularities and procedural errors first. If these do not oust the proceedings, then the court, will deal with the issues of competence of the parties to the preliminary objection. If these survive the axe, then the merits of the preliminary objection to be interrogated. Alternatively even if the proceedings are faulted, the merits can be gone into for jurisprudential record purposes only.

Starting with the irregularities and procedural errors as mentioned at the start of the ruling, the parties to the proceedings were Gideon Chacha Kamuno as plaintiff and Kenya Guards Allied Workers Union as the defendant. The relief sought as set out herein were simply the dissolution of the national executive committee of the Respondent/defendant and allow free and fair elections to be held within 21 days of the orders of the court. The second relief sought the above orders to be served upon the registrar of trade

union, District labour officers, and the Branch Manager KCB, KICC Branch for compliance whereas the 3rd relief sought the defendants to pay costs of the suit.

To this court's, knowledge that plaint has never been amended. This being the case it means that lawful activities and or transactions can only revolve around those reliefs.

As mentioned, the plaint had been accompanied by an interim chamber summons which was duly served and the same was compromised by the consent orders made by this court, on the 14th day of March 2007 and extracted on the 16th day of March 2007. The effect of those orders on the proceedings herein is that.

-They nullified the elections of the National Executive which had been held on the 13th day of May 2006 which was the major source of the complaint giving rise to the filing of the suit.

-They dissolved the National Executive committee which had been the major relief sought.

-They paved the way for the holding of free and fair elections to be held within 21 days from the date of that order. They further mandated that upon such elections being held, the newly elected officials were to assume office as soon as there was compliance by the Registrar of the Trade Union. Additional relief related to the service of the order to named parties and assistance to enforce the order sought from the O.C S. Kamukunji police station.

When these orders are considered in the light of the relief sought, it meant that once fresh elections were held, then the suit became spent and no further transactions should have been permitted to take place in it.

Relating the above to the rival arguments herein, it means that as at that point in time, Kenya Guards Allied Workers Union was still alive and Kicking before gazetting of a new union on 3/8/07. It is on record that there was no limb in the said consent order requiring the parties to come back to the court, to confirm compliance with the orders and that is why the record does not have any entry as to whether the orders were complied with or not. The revelation that the orders had been effected came much later, when the consent orders made by this court, on 05/10/07 were made. Item 3 of the said consent revealed that there are officials who had been voted in during the elections held at Webs Hotel Kisii on 24th March 2007, in pursuance to the consent order which had been entered herein. This being the position, it means that the proceedings herein stood spent, effective 24/3/2007. What followed thereafter were nothing but irregularities illegalities and errors as shall be demonstrated hereunder:-

1. **Live span of the suit-** Order V rule 1 CPR stipulates the time frame within which summons are to be served. In the first instance as per rule 1(1) the life span is stipulated to be 12 months from the date of issues. There is jurisdiction to extend the life span for a discretionary period as the court, may deem fit to extend from time to time, under rule 1 (2) vide rule 1 (7) where no extension has been obtained for 24 months, the court is at liberty to dismiss the suit. There is however no provision as to what should happen to a suit where summons have not been taken out and served, but this court, has no doubt that the same rule 1(7) would apply. It is now over 24 months since the suit herein was filed and yet no summons to enter appearance have been taken out. The court, has no hesitation to hold that the sole purpose why this procedural step has not been taken is because the suit became spent with the entering of the consent of 14/3/07 and the elections on 24/3/07.

2. There is an application dated 6th April 2007 and filed on 10th April 2007 under the hand of J.A. Guserwa for applicants. It is incompetent and irregular, in that it does not indicate who is the applicant and who is the respondent. From the content of the supporting affidavit, the complainant was not party to the said consent orders of 14/3/07.

(ii) By the time it was filed the suit had been spent.

3. The notice of appointment by Nyandieka and Associates as well as the chamber summons filed on 12th April 2008 seeking to introduce additional defendants to the suit was a nullity as the substratum of the suit had been spent.

4. This courts', orders of 5/10/07 are also irregular because as mentioned, the suit had become spent as at 24/3/07.

(ii) Item 1 of the said consent whereby the said orders sought to reverse the change of name from Kenya Guards and Allied Workers Union to Kenya National Private Security Workers Union was a nullity because there was no pleading and relief on the record on the basis of which that order could be made.

(iii) The injunctive relief granted in item 2 of the said consent was also invalid in that there was no pleading and relief on the basis of which an injunctive relief could be anchored, as what was being sought in the main pleading did not mention an injunctive relief.

5. The same reasoning as in number 4 above goes to apply to the consent order endorsed by Visram J herein as he then was (now JA) on the 16th March 2009. In summary form, all the issues covered in the said consent had no base on which they could be anchored and granted. The same were therefore without jurisdiction.

6. It should be noted that activities herein have mainly been triggered by this courts', endorsement of the court, orders through Nambuye J on 5/10/07 and Visram J as he then was (now JA) on 16/03/09. There is no doubt that the said orders were endorsed by the court, without going through the file. It is doubtful whether the said orders could have been made. Had the learned judges seized of the matter than perused the record, they would have discovered the errors.

The question for determination now is what is the appropriate order to be made herein, in the wake of the a fore set out revelation. In this courts', opinion, having come to the conclusion that the suit became spent with the holding of the elections on 24/3/07, and that all the transactions undertaken herein thereafter are a nullity, the court, has no hesitation but to invoke a ready tool enshrined in section 3A of the CPA to remedy the mischief. It is further this courts', opinion, that the said inherent jurisdiction of the court, can be invoked at the instigation of the litigants or on the courts', own motion. This is a fit case where by this jurisdiction can be invoked on the courts', own motion because the proceedings have been turned into a forum for power struggle between alleged officials of the Kenya Guards and Allied Workers Union on the one hand, and the Kenya National Private Security Workers Union on the other hand. This power struggle has led to the filing of the numerous applications, enumerated herein, which have done nothing but to cloud the issues and thus prevented the resolution of the issues raised by them on sound legal principles. The court, agrees with the sentiments expressed by counsel for the objector that the court, process has been abused. However I do not agree that his clients are clean. Both sides have abused the process of the court, and the only cure to that abuse is that the proceedings have to be axed.

For the reasons given in the assessment the court, proceeds to strike out the entire proceedings transacted herein after 24/3/07 as being an abuse of the due process of this court because:-

1. The relief sought in the plaint presented herein were limited to the nullification of the elections held in 2006, fresh elections to be held within 21 days, assistance from the police to enforce the orders, and service of the order, on named persons.

2. The consent order entered by Nambuye J on 5/10/07 and Visram J as he then was (now JA) on 16/3/09 have revealed that the said elections were held on 24/03/07 at Webs Hotel Kisii. This being the case the proceedings herein became spent.

3. Once the proceedings become spent, no further transactions could have been undertaken herein without first of all amending the pleadings to accommodate new emerging issues in controversy as between the parties.

4. By reason of what has been stated in number three above, the orders made by Nambuye J on 5/10/07 and Visram J as he then was on the 16/3/09 are nothing but nullities and more particularly those relating to the issuance of injunctive reliefs and reversal of the name from Kenya National Private Security Workers Union back to the Kenya Guards and Allied Workers Union. As well as relief directed at the Registrar of Trade Unions.
5. These being nullities and irregularities committed herein, the court, does not need to be moved by either party to rectify the situation. It has a ready tool enshrined in section 3A of the CPA which can be invoked on own motion to prevent further abuse of the due process of the court.
6. From what has been outlined herein all those who have filed process herein after 24/3/07 have abused the process of the court process.
7. The courts', own contribution to the nullities mentioned by endorsement of the consent of 5/10/07 and 16/03/09 is an act of inadvertence in that the same were endorsed before perusing the record to ensure that the same are properly anchored.
8. it should be noted that since the suit was filed summons to enter appearance have never been taken out providing proof of the suit having been filed not to resolve any issues between the parties but to provide a platform of power struggle between 2 unions. Since 24 months have already lapsed since the filing of the suit without the taking of summons to enter appearance, the suit has also died due effluxion of time.
9. By reason of what has been stated in number 1, 2, 3, 4, 5, 6,7and 8 above, there is no need to go into the merits of the preliminary objection raised, it too having been a nullity.
10. Each party will bear own costs.

DATED, READ AND DELIVERED AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2009.

R.N. NAMBUYE

JUDGE