



REPUBLIC OF KENYA

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

Civil Case 210 of 2006 Consolidated with Nairobi HCCC 209 of 2006

CHRISTOPHER ONGOTOPLAINTIFF

V E R S U S

1. JOSEPH TIMKUT CHIRCHIR

2. FRANCIS MUIRURI NG'ANG'A

3. FRED ONDARI ONTERE

4. GEOFFREY MOGIRE

5. DAVID OTEMA MOKAMBA

6. ARON GWONADEFENDANTS

R U L I N G

By a consent order entered on 2nd July, 2007, this matter was referred to the **Provincial Labour Officer, Nairobi** (PLO) for determination of some three agreed preliminary issues. The PLO was to file his determination within 60 days of the date of the order, that is, on or before 1st September, 2007.

On 1st November, 2007 when the suit was mentioned, the learned counsels present informed the court that the PLO had timeously supplied the parties with copies of his determination, but that he had not forwarded the determination to court. The court registry confirmed that this was so. The Defendants' learned counsel indicated that the Defendants would apply to court for extension of time to enable the PLO to file his determination. On his part, the Plaintiffs' learned counsel said that such application would be opposed.

Indeed the Defendants applied by chamber summons dated 12th November, 2007 for extension of time. The application is brought essentially under **Order 45, rule 8(2)** of the **Civil Procedure Rules** (the Rules). Under that sub-rule, the court may either extend the time for the making of the award, whether or not at the date of the application time has expired, and whether or not an award has been made since the expiry of the time allowed, or make an order superceding the arbitration, in which case it shall proceed with the suit. In the present case the PLO has not yet filed his determination in court.

The supporting affidavit is sworn by the PLO. He depones, *inter alia*, that he made his determination on 24th August, 2007 and forwarded copies of the same to the parties. A copy of the determination is annexed to the affidavit. The PLO also depones that he made arrangements for the determination to be

forwarded to the court well before expiry of the 60 days permitted by the referral order. But he does not state why the determination never reached the court.

The Plaintiffs have opposed the application; they filed grounds of opposition dated 29th February, 2008. Most of the grounds advanced are really such grounds as upon which an award may be set aside. But grounds 4 and 5 are germane to the present application. Ground 4 is that the PLO is not competent to swear the supporting affidavit by reason of his position as arbitrator, while ground 5 is that no reason has been given for the delay in filing the determination.

I have given due consideration to the submissions of the learned counsels appearing, including the cases cited. None of those cases deal with extension of time under Order 45, rule 8(2) of the Rules. Two of them deal with extension of time under Order 49, rule 5 while the third one deals with extension of time under section 79G of the Civil Procedure Act, Cap 21. Those cases are not quite germane to the application at hand.

In the present case it appears that the PLO prepared his determination well-within the period limited by the order of referral. He also forwarded to the parties copies of the determination within that time. Unfortunately the determination was not filed in court as it should have been. Beyond stating that he made arrangements for the determination to be forwarded to court, the PLO does not explain why the determination was never forwarded to court. He should have done so. Inasmuch as the failure or delay to file the determination was that of the PLO, I find nothing wrong or sinister in his swearing the affidavit in support of the application.

There is no dispute that the PLO prepared the determination within the time limited by the order of referral, and forwarded to the parties copies of it within that time. I am therefore satisfied that the Plaintiffs do not stand to suffer any prejudice by any extension of the time for filing the determination. Their right to apply for the setting aside of the determination will not be affected in any way. If they so apply, the bulk of the grounds set out in their grounds of opposition can then be properly canvassed.

For the above reasons I will allow the application by chamber summons dated 12th November, 2007. The time limited by the order of referral is hereby extended from 1st September, 2007 to 23rd October, 2008. That means that the PLO's determination must be filed on or before 23rd October, 2008. Costs of the application shall be in the cause. It is so ordered.

DATED AT NAIROBI THIS 7TH DAY OF OCTOBER, 2008

H. P. G. WAWERU

J U D G E

DELIVERED THIS 9TH DAY OF OCTOBER, 2008