



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
CIVIL CASE 5161 OF 1991

1. GEOFFREY ODHIAMBO OBORA.....PLAINTIFF
2. FELIX KAVOI MUSYOKI.....PLAINTIFF
3. JOSEPH NDIRITU WAICHAGURU.....PLAINTIFF
4. WALTER OGANDO OWITI.....PLAINTIFF
5. STEPHEN AGOGO OBIERO.....PLAINTIFF
6. RAPHAEL OKUNGA.....PLAINTIFF
7. MOSES KIMANI WAITHAKA.....PLAINTIFF
8. AMERE ZAKAYO.....PLAINTIFF

VERSUS

CHINESE TECHNICAL TEAM.....DEFENDANT
ATTORNEY GENERAL.....DEFENDANT

RULING

The suit was filed in court on 25th September 1991. No efforts have been made by the plaintiff to set it down for hearing until the 2004 when it was confirmed during the call over and was set down for hearing for 13th March 2005 when the suit came up for hearing on 13th March 2005. Mr. Kuloba counsel for the plaintiffs informed the court that he was not ready to proceed with the matter as he had been unable to get the witnesses. He applied for adjournment and requested that the matter be stood over generally. This suit having been in court for the last 14 years, the court declined to grant the adjournment Mr. Kuloba then informed the court that since he had no witnesses he was not able to proceed. The suit was dismissed.

On 27th July 2005 about 4 months after the dismissal Mr. Kuloba again made an application seeking orders that the dismissal order made on 15th March 2005 be reviewed and set aside and the suit be reinstated. The application is based on the following grounds:

(a) That it has been difficult on the part of the advocate on record to trace the plaintiffs as most of them have got employment in various parts of the country and lost their contacts.

(b) That due to lack of contacts with the plaintiffs he has no clear instructions.

(c) That a mere technicality should not be used to deny the plaintiffs an opportunity to be heard on merit to see that the ends of justice are met.

(d) That failure of the witnesses to attend court was not intentional nor a result of innocence on the part of the plaintiffs nor their advocates.

The application is supported by two affidavits. One by counsel and the other by one Feliz Kavoi, one of the plaintiffs. In his affidavit Mr. Kuloba depones that he had met one of the plaintiffs Mr. Felix Kavoi and informed him of the hearing date and had requested him to get his co-plaintiffs. Mr. Felix Kavoi in his affidavit depones that he was able to trace his co-plaintiffs who informed him that they were not able to attend court as they had not obtained leave from their respective employers. Mrs. Kajwanga counsel for the defendant in opposition to the application submitted that the grounds given for adjournment are not sufficient and urged the court to disallow the application.

This suit has been in court over 14 years. It was confirmed during the call over but when it came up for hearing counsel for the plaintiffs said he had no witness as he was unable to trace them. But according to the affidavit of Felix Kavoi one of the plaintiffs, he was informed by counsel about the hearing date and was able to trace the other plaintiffs who said they were not able to attend court as they had not obtained leave from their respective employers.

It is clear that the plaintiffs have lost interest in their suit and to allow this application and reinstate the suit would be prejudicial to the defendant and would serve no purpose and would cause grave injustice to the defendant.

The application is dismissed with costs to the respondent.

Dated at Nairobi this 21st day of February 2006.

J.L.A. OSIEMO

JUDGE