



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

Misc Civ Appli 210 of 2006

JOSHUA OMONDI AWUOR.....
.....PLAINTIFF

VERSUS

KENYA RAILWAYS CORPORATION.....
.....DEFENDANT

RULING

This Ruling is delivered in the Notice of Motion dated 24th February 2006 filed in this court on 28th February 2006. The same was heard inter partes in this court pursuant to a Ruling delivered by the Honourable Mr. Justice Njagi on 10th March 2006, allowing the same under Order 32 Rule 5 after considering the same in light of the requirements of that rule which he found to have been satisfied. The said provision reads as follows:

“5. The court shall reject an application for permission to sue as a pauper –

- (a) **Where it is not framed and presented in the manner prescribed in Rules 2 and 3; or**
- (b) **Where the applicant is not a pauper; or**
- (c) **Where he has within two months next before the presentation of the application disposed of any property fraudulently or in order to be able to apply to sue as a pauper; or**
- (d) **Where his allegations do not show a cause of action; or**
- (e) **Where he has entered into any agreement with reference to the subject matter of the proposed suit under which any other person has obtained an interest in such subject matter.**

The learned Judge then proceeded to set down the application for hearing pursuant to Rule 6 of the relevant Order for the purposes of receiving evidence in proof of pauperism, and the opponents’ evidence in disproof thereof.

The Applicant has produced a letter up from the Chief, Makongeni Location, Ms Damaris Muchiri stating that the applicant is a destitute living off his friends and relatives and that he had no assets either movable or immovable. The letter also confirmed the applicants claim that he has 6 children whom he cannot even educate and who were out of school.

The application is opposed on the strength of Grounds of opposition filed on 18th April 2006 wherein the opponent's advocates state that

- (1) The applicant is not a pauper within the contemplation of the law and does not qualify for the orders sought
- (2) The allegations by the applicant are frivolous and no reasonable cause of action has been disclosed.
- (3) That no action lies against the Respondent Corporation on the basis that the applicant has not issued a statutory Notice under Section 87 of the Kenya Railways Act (Cap 397 of the laws of Kenya)
- (4) That the application is untenable and an abuse of the process of court.

Counsel for the Respondent submitted along the said grounds and in support thereof tendered before me the Kenya Railways Corporation's Personnel Regulations to justify the dismissal against which the applicant intends to sue. Despite my having undertaken at the request of both parties to peruse certain clauses of the said document as regards their opposing arguments for and against the existence or non existence of a cause of action, I have reconsidered that position in light of the honourable Mr. Justice Njagi's Ruling and have formed the view that this document is irrelevant for the purposes of this application, given the learned Judge's finding in regard to order XXXII Rule 5(d) in regard to the cause of action.

With due respect to Counsel for the Respondent, what the Respondent needed to do at this stage is to adduce evidence necessary to disprove the claim of pauperism which it has not done. It matters not that the Applicant was terminated not too long ago and ought not to have exhausted his earnings or that he had until then been earning a reasonable salary. Counsel submitted also on the merits of the intended suit which are not relevant at this stage.

The opponents having not adduced any evidence to disprove the claim to pauperism which, prima facie, had been established before Hon. Mr. Justice Njagi, subject to evidence to the contrary being adduced under Rule 6, I have no reason to refuse this application based on the evidence tendered by the applicant which has not been rebutted as required. I allow the same and grant the orders sought in the Notice of motion dated 24th February 2006.

Dated and delivered at Nairobi this 31st day of July 2006

M. G. MUGO

JUDGE

Delivered in the presence of

The Applicant in person

Mr. Kaluma for the Respondent