



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**Civil Case 223 of 2004**

**RLCO STEEL FABRICATORS LIMITED.....1<sup>ST</sup>**  
**PLAINTIFF**

**MAVJI RAMJI LADHA PATEL.....2<sup>ND</sup>**  
**PLAINTIFF**

**VERSUS**

**COMMERCIAL BANK OF AFRICA LTD.....1<sup>ST</sup>**  
**DEFENDANT**

**HARVEEN GARDHOKE.....2<sup>ND</sup>**  
**DEFENDANT**

**DANIEL NDONYE.....3<sup>RD</sup>**  
**DEFENDANT**

**DELLOIT & TOUCHE.....4<sup>TH</sup>**  
**DEFENDANT**

**R U L I N G**

This is an application which has been brought pursuant to the provisions of Order 1 rule 8 (1) (2) and (3) of the Civil Procedure Rules, as read together with Section 3A of the Civil Procedure Act. The application has been made by “**Interested Parties.**”

In the title to the suit, the applicants have described themselves as persons who were “**suing on their behalf and on be half of 53 others.**”

It is the wish of the three named applicants and the 53 others to be enjoined to this suit as “**interested parties.**”

By way of background information, it is important to note that the persons who have sought leave to be enjoined to the suit were all former employees of RLCO STEEL FABRICATORS LIMITED, the 1<sup>st</sup> plaintiff. It is common ground that on 19<sup>th</sup> June 2003 the Commercial Bank of Africa Limited appointed receiver managers over the 1<sup>st</sup> plaintiff. The said receiver managers were Mr. HARVEEN GADHOKE and Mr. DANIEL NDONYE, who are the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, respectively.

It is the applicant's case that following the appointment of the receiver managers over the 1<sup>st</sup> plaintiff, the said plaintiff had failed to act on the Industrial Court Award which was made on 21<sup>st</sup> July 1999. Therefore, as the 1<sup>st</sup> plaintiff was still in receivership, the applicants submit that they should be enjoined to the suit,

**“so that they may be catered for in the final results of the receivership.”**

When the court called upon Mr. Mung'au, advocate for the applicants, to expound on that phrase, he explained that the applicants would wish to be counted amongst the creditors of the 1<sup>st</sup> plaintiff, as and when the said plaintiff was liquidated. The reason advanced for that wish is that the applicants had already made a demand on the 1<sup>st</sup> plaintiff for KShs. 5,382,101/=.

To my mind, the claim by the applicants is one for an alleged debt arising out of the decision of the Industrial Court in **Cause Number 338 of 1997**, which was as between the Kenya Engineering Workers Union on the one hand, and RLCO Steel Fabricators Limited, on the other hand. With regard to that Cause, the Industrial Court returned its verdict on 21<sup>st</sup> July 1999, awarding to the claimants certain specified benefits. In effect, the dispute was determined.

Meanwhile, in the present case, the plaintiffs were challenging the existence of a debt that was allegedly owed to the 1<sup>st</sup> defendant. Based upon that challenge, the plaintiffs contend that the receiver managers ought not to have been appointed over the 1<sup>st</sup> plaintiff, and also that the securities ought not to be realised.

Although the plaintiffs did apply for an interlocutory injunction, their said application was dismissed by the Hon. MK. IBRAHIM, on 15<sup>th</sup> October 2004.

The 2<sup>nd</sup> defendant has sworn an affidavit in which he makes the following two points.

- (i) All the employees of RLCO Steel Fabricators Limited had been terminated by 23<sup>rd</sup> November 2004, and each of them was paid the preferential payments due to them, in their capacity as former employees.
- (ii) All the assets of the 1<sup>st</sup> plaintiff which came into the possession of the receivers had already been sold off.

Bearing in mind the fact that the assets of the 1<sup>st</sup> plaintiff, which had been in the hands of the receivers had been sold off, it does appear that the issue of liquidating that company would not arise in this case.

In any event, the applicants do not indicate whether they wish to be plaintiffs or defendants in the case. That issue is important because the applicants have invoked the provisions of Order 1 rule 8 (1), (2) and (3) of the Civil Procedure Rules.

In my understanding subrule (1) allows one or more persons to sue or be sued in one suit, for and on behalf of all persons with the same interest in the one suit. In other words, the person(s) allowed to bring the representative action or representative defence must be either a plaintiff or a defendant, insofar as he will sue or be sued. Therefore, I hold the view that if a person does not demonstrate that he was to be either a plaintiff or a defendant, he would have failed to bring himself within the scope of Order 1 rule 8.

Having given consideration to the applicant's request I fail to find any cause of action which they may have against either the plaintiffs or the defendants herein. I say so because as against the 1<sup>st</sup> plaintiff, the Industrial Court already granted an award in favour of the applicants. Therefore, there would be no further issue for determination. And even if there were to be such an issue, as between those two entities, the same ought to be resolved through the Industrial Court.

Meanwhile, as against the defendants herein, the applicants have failed to demonstrate any cause of

action of any kind.

In the circumstances, I decline the application for leave to enjoin the applicants as interested parties to this suit. I also decline the applicants leave to have the three named applicants to represent themselves and the 53 other named persons in this suit.

Finally, I order that the applicants will meet the defendants' costs for the application dated 2<sup>nd</sup> June 2004.

Dated and Delivered at Nairobi, this 25<sup>th</sup> day July 2006.

**FRED A. OCHIENG**

**JUDGE**