



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

Civil Case 165 of 2004

JOSEPH MBURU MWIKAMBA & 10 OTHERS.....PLAINTIFFS

VERSUS

DEL MONTE (K) LTD.....DEFENDANT

RULING

On the 29th December 1998 the Defendant terminated the employment of the plaintiffs and others on the ground of the ongoing re-organization of the Defendant's Company.

On 23rd February 2004, the 10 defendants for themselves and on behalf of other former employees of the defendant – DEL MONTE KENYA LTD filed this suit against the defendant seeking judgment for the following orders:

- (a) A **DECLARATION** that their retrenchment was unlawful and a breach of their fundamental rights under Section 71 and 75 of the Constitution of Kenya.
- (b) An **ORDER** that the defendant do pay the plaintiffs all their redundancy payments.
- (c) An **ORDER** for damages for breach of their rights and contract of employment.
- (d) Costs of the suit and interest.
- (e) Any other better relief.

On the 26th August 2004 the defendant filed this Chamber Summons seeking orders (1) that the plaintiffs' plaint be struck out (2) that the verifying affidavit annexed to the aforesaid plaint be struck out and (3) that consequently the plaintiff's suit against the defendant be dismissed with costs as well as the costs of this application.

The application is based on the following grounds:

1. That the plaint filed in this matter is scandalous, frivolous and vexatious and an abuse of the process of the court.
2. That the verifying affidavit sworn herein is ex facie incompetent, fatally defective and inadmissible as a verifying affidavit.

3. That the verifying affidavit is further fatally defective as the plaintiffs did not swear separate affidavits verifying the contents of the plaint herein.
4. That the plaintiffs herein did not seek leave of the court to bring a representative suit.
5. That the plaint does not disclose the total number of the plaintiffs herein.

The application is also supported by an affidavit sworn by KIRIMA MUNYIRI the Resources Manager of the defendant company in which he avers that the plaintiffs herein indicated in the plaint that they were bringing this suit on behalf of themselves and other employees of the defendant and this therefore amounts to a representative suit; that where on parties bring a representative suit it is imperative that leave of the court be sought before the suit is commenced as provided for under Order 1 Rule 8 of the Civil Procedure Rules that the plaintiffs also failed to disclose the total number of persons on whose behalf and benefit they have brought this suit. Further the applicant avers that the verifying affidavit accompanying the plaint is defective and bad in law as the plaintiffs herein have not sworn separate Affidavits Verifying the contents of the plaint.

The respondents were served but they did not file any papers to oppose this application.

The application is allowed in terms of prayers 1, 2, 3 and 4 of the Chamber Summons dated 26th August 2004.

Dated and delivered at Nairobi this 14th day of September 2006.

J.L.A. OSIEMO

JUDGE