



**REPUBLIC OF KENYA**

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

**CIVIL SUIT NO. 263 of 2000**

**1. HUMPHREY MAINA KARIUKI**

**2. JAMES CHEGE GITHUKU**

**3. JAMES OCHIENG RADO**

**4. BARNABAS KIBIWOTT LELIT**

**5. SAMSON KIPROTICH MAIYO ..... PLAINTIFFS/RESPONDENTS**

**VERSUS**

**TELEPOST INVESTMENT CO-OPERATIVE SOCIETY LTD.....1ST  
DEFENDANT/RESPONDENT TELEPOST CO-OPERATIVE SAVINGS**

**AND**

**CREDIT SOCIETY LTD ..... 2ND DEFENDANT/APPLICANT**

**RULING**

By its application of the 29th June, 2004 the 2nd Defendant seeks to strike out the Plaintiff in so far as it is concerned.

The Application is made under O.6 rule 13 1(a) and (d), Ground (a) is that no reasonable cause of action is disclosed against it. Grounds (b) (c) (d) and (e) are predicated on the facts alleged in the Defence filed by the 1st and 2nd Defendants and the Plaintiff and the inference to be drawn from the same.

As it has been said many times a court will only strike out a pleading in plainest and most obvious cases (See DT Dobie & Co., (Kenya) Ltd. versus Joseph Muchina & Another C.A. No.37 of 1978 and with properties versus Jagir Kalsi in (C.A. 132/89) The Plaintiff in paragraph 3 alleges that the Plaintiffs were employees of the 2nd Defendant but in paragraph 4 it is alleged that the Plaintiffs were “deployed” to work for the 1st Defendant on the same terms of service and the 1st Defendant became an agent or an assignee of the 2nd Defendant as regards the respective contracts of service with the Plaintiff.

In paragraph 6 of the Plaintiff it is alleged that the 2nd Defendant interdicted the Plaintiffs and in paragraph 8 that the 1st Defendant declared the Plaintiffs redundant and in paragraph 10 there is an allegation that the Defendants in breach of the contracts of service terminated the Plaintiff’s employment. The prayers in the plaintiff are against the Defendants jointly and severally. In paragraph 2 of the 2nd Defendant’s Defence paragraphs 1,2, and 3 of the plaintiff are admitted.

Mr. Isindu for the Plaintiff submitted that this amounted to an admission in paragraph 3 of the said Defence that the Plaintiffs were employed by the 2nd Defendant. I accept this submission but it must I think be read in connection with the other allegations set out in the Plaintiff. It also begs the question what were the material times. The real question in issue is whether the Plaintiff had two employees or only the 1st Defendant. That question depends on the position arising from the events set out in paragraph 3 of the Plaintiff.

The word used is “redeployed” this has no significance, as far as I am aware in law. The circumstances set out postulate two positions in law. Firstly that the Plaintiffs were employed by the 1st Defendant and secondly that the Plaintiffs still remained the employees of the 2nd Defendant but that, they were sub-contracted to the 1st Defendant. The words used in the plaintiff are that the Plaintiffs were the agents and/or assignee of the 2nd Defendant. I think this is a somewhat garbled concept.

As an agent or assignee of the 2nd Defendant, the 1st Defendant could only have terminated that relationship between itself and the 2nd Defendant. It would have no rights to interfere with the conditions of employment of the Plaintiffs with the 2nd Defendant. It is clear however from the Plaintiff that the 1st Defendant not only paid the Plaintiff but revised the terms of service of the Plaintiff (see paragraph 10 of the Plaintiff. They also interdicted them and put them on half salaries and then declared them redundant (see paragraph 6 and 8 of the Plaintiff). In my view on the Plaintiff’s own facts as alleged the 1st Defendant had in fact become the employer of the Plaintiff. The word “redeployed” must I think in the circumstances be construed as “employed the Plaintiff” Can, however, the plaintiff be saved by an amendment? In my view it cannot as the facts are stated clearly and no amendment could alter the position in law as disclosed by the facts.

In the result I do not see that there is any cause action against the 2nd Defendant and strike him out from the suit with costs to the Applicant. The costs so far as the 1st Defendant are concerned will be costs in the cause.

**Dated and delivered at Nairobi this 19th .day of May 2005**

**P.J. RANSLEY**

**JUDGE**