

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

Civil Case 1256 of 2002

JOHN OYAWO NEKO AND THREE OTHERS.....PLAINTIFFS

-versus-

UNITY 45 HOUSING CO-OPERATIVE SOCIETY LTD.DEFENDANT

R U L I N G

The Defendant/Applicant has filed a Chamber Summons dated the 12th January 2004 which was to be heard, *inter parties* on the 17th February 2004.

At such hearing, Mr. *Nyakiangana* for the Plaintiffs/Respondents sought directions as to whether or not such application was properly before the Court arguing that the orders it seeks have already been granted in a similar application on the 16th July 2003 by *Nyamu J* and as such order are still subsisting, the subject application is *res judicata*.

Mr. Koge for the Defendant/Applicant in reply contended that the Orders of the 16th July last were pursuant to an Interlocutory Judgment entered on the 5th July 2003 and were subsequently vacated by *Visram J* on the 15th January 2004 following the Plaintiffs' successful application setting aside the Interlocutory Judgment.

Having perused both Orders in conjunction with the record, I am satisfied that the Order of the 15th January 2004 vacated the earlier ones of the 16th July 2003 the later having in any event been granted *ex parte* pending, in my view, formal proof or hearing *inter parties* thereby allowing the parties to go to trial on the issues in this suit. Pending trial the Defendant/Applicant is at liberty to prosecute its said application of the 12th January 2004.

Dated and delivered at Nairobi this 24th day of February 2004.

P. Kihara Kariuki

Ag. Judge