

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT 378 OF 2003

JAMES WAHENYA KAMAU

LYDIA MUTHONI NDERITU

WESLEY KIPNG'ENO BETT PLAINTIFFS

VERSUS

KENYA BREWERIES LTD DEFENDANT

RULING

By their Chamber Summons of the 27th February, 2004 the Applicants seek to be joined as parties to this suit under O.1 rule 10 (2) of the Civil Procedure Rules. This enables the court at any stage to order that the name of any person who ought to have been joined he added to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit. In this case I ordered the Plaintiff herein to be struck out and the Applicants do personally and equally pay to the Defendant the costs of this suit.

This order was made as neither of the Applicant held practicing certificate at the material times and for the reasons set out in my ruling of the 5/12/2003. The reason for this application is contained in ground 5 of the Application, which states. "That the said taxation as between the Defendant and the Applicants herein yet the Applicants have no locus in this matter and it is imperative that they be joined as parties to this suit for the purpose of prosecuting and/or defending any proceedings on their own behalf". In the supporting affidavit Mr. Ngala states that he and Mr. Kinuthia are both desirous of challenging my said orders by way of review.

Is it necessary for the Applicants to be parties to the suit and what if any is their remedy as they are aggrieved by my order ordering them to pay the costs of the dismissed suit. Mr. Gachuhi who opposed the application relied on section 27 of the Civil Procedure Act, which gives the court a complete discretion to determine by whom costs are to be paid. Both applicants were seized of this suit on behalf of the Plaintiffs. The Plaintiff has a right of appeal against my decision which right they have not chosen to exercise.

The provision of Order 44 for review apply to any person aggrieved. The aggrieved party does not necessarily have to be a party to the suit so long as he can satisfy the requirements for review set out in the order. It is not therefore necessary for the applicants to be parties to this suit to seek a review of my order and in the result I dismiss this application with costs to the Respondent.

Dated and delivered at Nairobi this 1st April 2004

P.J. RANSLEY

JUDGE