



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL CASE NO. 33 OF 1998

DICK KAMAU NJUGUNA.....1ST PLAINTIFF
DAVASON GICHUKI.....2ND PLAINTIFF
DANIEL BARAGU.....3RD PLAINTIFF
JOHN MWANGI NJOROGE.....4TH PLAINTIFF
PASCAL KAMAU.....5TH PLAINTIFF
CHARLES MAINGI MACHARIA.....6TH PLAINTIFF

VERSUS

NAKURU KIAMUNYEKI CO. LTD.....1ST DEFENDANT
STEPHEN MBOTE.....2ND DEFENDANT
EVANS KIRIUNGI.....3RD DEFENDANT
PAUL CHIERA.....4TH DEFENDANT
MOSES KARANJA.....5TH DEFENDANT
MATHEW GITAHU.....6TH DEFENDANT
DAVID KARUGA.....7TH DEFENDANT

RULING

The Applicants herein have made an application under *Order L rule 1, Order XLIV Rule 1(a) of the Civil Procedure Rules, Sections 3A, 63(e) and 80 of the Civil Procedure Act* seeking the orders of this Court to review or set aside the order of this Court issued on the 7th of May 2004 and dated the 11th of May 2004. The Application is grounded on the legal reasons stated on the face of the Application and supported by the annexed affidavit of Mathew Gitahi, the 6th Defendant. The Application is opposed.

The Respondents have filed a replying affidavit in opposition to the Application.

Mr Karanja, Learned Counsel for the 2nd to the 6th Defendants, (who are the applicants) argued their application on their behalf when the same came up for hearing before this Court. The Plaintiffs were served but they did not file any papers in support or in opposition of the Application. The 1st Defendant however opposed the Application. It was represented by Mr Waiganjo during the argument of the Application.

This Application to review the order of this Court dated the 11th of May 2004 arose from a consent order that was filed in Court and dated the 4th of May 2004. The said consent was entered between the Plaintiffs and the 1st Defendant. The 2nd to the 6th Defendants were not party to the said consent order. The said consent order purportedly allowed the Application which was filed by the 1st Defendant and which was dated the 8th of December 2003. The said Application was not served upon all the parties to the suit. It is only the Plaintiffs who were served with the Application. The 2nd to the 6th Defendants were not served with the said Application yet the prayers sought in the said application were far reaching and would affect the rights of the 2nd to 6th Defendants who are Defendants in this suit. When the Plaintiffs and the 1st Defendant thus compromised the application by consent on the 4th of May 2004, it affected the rights of the 2nd to the 6th Defendants who were not parties to the said Application. Neither were they parties to the said consent. The order of this Court dated the 11th of May 2004 purportedly endorsing the consent of the 1st Defendant and the Plaintiffs compromising the suit is therefore not a true reflection of the consent of the parties to the suit. The 2nd to the 6th Defendants were excluded. In so far as the Plaintiffs' and the 1st Defendant were purporting to bind the 2nd to the 6th Defendants in the said consent order, the said consent order was illegal and could not stand. A consent order can only be binding upon the parties who entered into it. Some litigants in a suit cannot purport to enter into a consent order binding other parties who did not agree to the said consent order.

In the premises therefore, the Application filed in Court on the 5th of May 2004 by the 2nd to the 6th Defendant is hereby allowed. The order of this Court dated the 11th of May 2004 which was issued pursuant to the consent order of the 1st Defendant and the Plaintiffs is hereby reviewed and set aside. The consent order purportedly entered between the Plaintiffs and the 1st Defendant dated the 4th of May 2004 is also set aside. The 1st Defendant is ordered to serve the Application dated the 8th of December 2003 upon the 2nd to the 6th Defendants so that the same can be heard by the High Court at the date to be fixed at the registry. The Applicants shall have the costs of this application.

DATED at NAKURU this 1st day of October, 2004.

L. KIMARU

AG. JUDGE