

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
CIVIL SUIT 1285 OF 2003

SIMON IGECHA & 510 OTHERSPLAINTIFFS

Versus

KENYA BREWERIES LIMITED1ST DEFENDANT

HON. THE ATTORNEY GENERAL2ND DEFENDANT

RULING

In the Notice of Motion dated the 19th August 2004, the 1st Defendant/Applicant seeks orders including that the plaint herein be struck out.

At the hearing of the Motion on the 22nd November 2004, Mr. Rumba Kinuthia for the Plaintiffs/Respondents made preliminary submissions that in his opinion, the parties should be permitted to lead oral evidence at the hearing of the Motion and should not be restricted to relying on affidavits. The basis of learned counsel's request was that a similar order had been made by Ransley, J in Nairobi HCCC 378 of 2003 in an application to strike out the plaint therein.

Mr. Peter Gachuhi, learned counsel for the 1st Defendant/Applicant, objected on the grounds that the circumstances in HCCC 378 of 2003 aforesaid were substantially different and that there is nothing in the present application to justify *viva voce* evidence.

As counsel for Plaintiffs/Respondents has not made a formal application and there is therefore no evidence before me by way of affidavits to enable me determine whether or not oral evidence would be of assistance to the court in relation to the Motion presently before the court, I decline to rule in favor of the Plaintiffs/Respondents and order that the notice of Motion dated the 19th August 2004 do proceed to hearing on date to be fixed at the Registry on the basis of affidavits filed in connection therein. The Plaintiffs/Respondents are, however, at liberty to make a formal application should they wish to pursue their plea.

Dated and delivered at Nairobi this 26th day of November 2004.

P. Kihara Kariuki

Ag. Judge