

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

CIVIL SUIT 35 OF 2003

BENJAMIN NJEGWA & 2 OTHERS.....PLAINTIFFS

VERSUS

ISHMAEL JOKOYO AWINO & 35 OTHERS.....DEFENDANTS

RULING

One of the 35 Defendants herein, the 32nd, filed an application dated 16th July, 2003 praying that the plaint be struck out or be dismissed with costs.

The main ground under which the application was made was that the company, **KIMKASAGIKI LIMITED** under whom the plaintiffs were suing as shareholders of the said company was struck out by the Registrar of Companies vide Kenya Gazette Notice No. 4583 of 28th September, 1990. It was also contented that the plaintiffs had no capacity to file the suit since they were members and shareholders of a non-existent company.

The respondent did not file any replying affidavit but filed grounds of opposition saying, inter alia, that the issue as to whether the said company existed or not was not of any necessity. He further pointed out that the deponent to the supporting affidavit of the applicant's application was a stranger to the proceedings and he urged the court to strike out the affidavit.

I do not agree with the respondents' submissions. The affidavit in support of the said application was sworn by the then Chairman and Director of the aforesaid company before it was struck out by the Registrar of Companies and the evidence that he adduced in proof of that fact was a copy of the Kenya Gazette which is a public document published by Authority of the Republic of Kenya. If the respondents wished to challenge the aforesaid contention they should have brought evidence to prove that the company was alive and operational.

Section 339(5) of the Companies Act clearly provides that on publication in the Kenya Gazette of a notice striking off a company from the registrar the company stands dissolved. Where a company is dissolved, all property and rights whatsoever vested in or held in trust for the company immediately before its dissolution becomes, but subject to any court order, **bona vacantia**, and therefore Government property.

Since the plaintiffs herein brought this suit in the year 2003 as shareholders of a company that had been dissolved way back in 1990, the suit cannot lie and it is therefore struck out with costs to the 32nd defendant.

DATED, SIGNED & DELIVERED at Nakuru this 25th day of November, 2004.

DANIEL MUSINGA

AG. JUDGE

25/11/2004