

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 234 OF 2001

**KIRINYAGA TRADERS CO. LTD.....PLAINTIFF
VERSUS
JOEL GIKUNJU GATHUNGU & 16 OTHERS.....RESPONDENT**

RULING

In its Complaint dated July 6, 2001 and filed in this Court on the same date the Plaintiff averred as follows:

“8. That there has been previous proceedings between the Plaintiff and the Defendants in Nakuru High Court Companies Petition No. 2 of 2001 which the Petitioner has since withdrawn and also Nakuru High Court Civil Case No. 205 of 2000 in which the High Court determined on the lawful directors of the Company.”

A similar averment was contained in the Verifying Affidavit accompanying the Complaint. In fact, the Petition mentioned could not have been withdrawn at the time this suit was filed since the Notice of Withdrawal was filed on July 9, 2001. The case in NAKURU HCCC No. 205 of 2000 had also not been determined conclusively at the time this suit was filed. What the Court had done in that case was to determine an interlocutory application in the matter. These matters are contained in the affidavit of Joel Gakuya sworn on July 17, 2001 in support of the Defendants' application seeking to have this suit and the Verifying Affidavit struck out. The Replying Affidavit of Kathurai Ngunga sworn on July 19, 2001 does not controvert the matters set out by the Defendants. The Complaint and the Verifying Affidavit, therefore, misrepresented material facts. They are, on that ground alone, struck out.

I, therefore, allow the Defendants' application dated July 17, 2001 with costs. The Defendants will also have the costs of the suit.

Dated and Delivered at Nakuru this 15th day of July, 2003.

ALNASHIR VISRAM

JUDGE

