



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

AT MACHAKOS
CIVIL CASE NO. 70 OF 2001

1. SAMMY MAKAU1ST PLAINTIFF

2. BONIFACE NZANGI 2ND PLAINTIFF

3. ALEXANDER MUTINDA3RD PLAINTIFF

VERSUS

1. THE SECRETARY K.L.G.W.UN....1ST DEFENDANT

2. THE CHAIRMAN K.L.G.W.UN..... 2ND DEFENDANT

3. NATIONAL SECR. K.L.G.W.U..... 3RD DEFENDANT

4. THE OFF. LABOUR OFFICE MKS..4TH DEFENDANT

RULING

In this court's ruling arising from the defendants' application dated 28.11.2001 brought under order 6 rule 13 (b) (c) and (d) of the Civil Procedure Rules and section 3A of the Civil Procedure Act seeking orders that the suit be dismissed for the reasons given, this court upheld that application for the reason that the plaintiffs had filed a dispute before the Registrar of Trade Unions and also filed the suit herein in court. This court ruled that dual process of dispute resolution cannot be allowed and on that basis alone dismissed the suit.

The plaintiffs did not lose heart. They have come back to this court by way of notice of motion under order 44 rule 1 (1) (a) and section 3A of the Civil Procedure Act seeking orders that the Honourable court be pleased to review its order and ruling dated 7.3.2002, that there be a stay of the execution of the orders made on 7.3.2002 pending hearing and determination and that costs be provided for.

The grounds are set out in the body of the application supporting affidavit and oral submissions in court and the major ones are that the only reason for striking out the plaint was because the court was under a mistaken belief that there was a dispute still pending before the Registrar of Trade Unions, a fact which did not

exist as shown by a letter from the Registrar of Trade Unions. That there is therefore an error apparent on the face of the record entitling this court to review the said ruling, set it aside and restore the suit for hearing and final disposal.

The defendant was served with the application. They filed their grounds of objection out of time. They put in an application filed on 9.4.2002 for enlargement of time to validate the grounds. This application was not set down for hearing and so there is no opposition of the application for review. Further counsel for the defendants did not attend the hearing despite the fact that the date had been taken by consent and since no reason was given for non attendance of the defence the court allowed the applicant to proceed exparte.

On the merits of the application I find that it is correctly submitted that the major reason for dismissing the suit was that the plaintiffs had registered a dispute with the Trade Unions Registrar which was earlier in time and their subsequent filing of the suit in court was a duplication of suits. This courts attention has been drawn

to the letter from the department of the Registrar General annexure 2 dated 11.3.2002 which is to the effect that by the time the plaintiffs filed a dispute with the Registrar of Trade Unions. The elections had directly been registered and so the dispute was overtaken by events. Annexure 3 calls for fresh elections.

In view of the foregoing I find that there is an error apparent on the face of the record which entitles the applicant to avail himself of the principles of review as set out in order 44 of the Civil Procedure Rules. The ingredients have been satisfied.

I find merit in the application dated 28.7.2002 and I allow prayer

1 thereof.

2. As for costs it is the applicant who should have brought out the information they have now brought to court when the application was heard earlier on. They are the ones who have occasioned this application and so they will pay their own costs.

3. The suit is restored for hearing and final disposal in court.

Dated, Read and delivered at Machakos this..... day
of 2002.

R. NAMBUYE

JUDGE