

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 508 OF 2001

PAUL GACHANGA NDARUA APPLICANT
REPUBLICRESPONDENT
KIPNG'ENO ARAP NG'ENY AND ANOTHER ...INTERESTED PARTIES

RULING

The applicant in this case Paul Gachanga Ndarua has on his application dated 12th June 2001 named the Republic as the Respondent. He has also named two interested parties. They are KIPNGENO ARAP NGENY and the Postal CORPORATION OF KENYA respectively.

At the hearing Mr. Ojiambo Advocate who appeared for the postal Corporation of Kenya raised a preliminary objection. The preliminary objection was under order 1 r. 10 of the Civil Procedure rules and was based in an affidavit sworn by Mr. John F.K. Omanga the Corporation Secretary of the Postal Corporation of Kenya. We have perused and considered the annexures to Mr. Omanga's affidavit. We agree with Mr. Ojiambo Advocate that when Kenya Posts and Telecommunications Corporation was disbanded its assets, and liabilities were shared among and vested in three newly formed Corporations, to wit;

- (1) Postal Corporation of Kenya
- (2) Telekom Kenya Ltd.
- (3) Communications Commission of Kenya

AFRALTI Project which forms the basis of the matter before us was vested in the Communications Commission of Kenya. Mr. Kilonzo, Advocate for the applicant told us that he served the said Communications Commission of Kenya but it declined service and referred him to the Postal Corporation of Kenya. Postal Corporation of Kenya accepted service but in protest. Hence the preliminary objection before us. We have considered the preliminary objection and what each side had to say. We agree with Mr. Ojiambo Advocate that under the circumstances of this case Postal Corporation of Kenya is not a proper interested party in the dispute before us. It is struck out as prayed.

However, we are of the view that Communications Commission of Kenya is an interested party in the matter. We believe they declined service of the court process due to misunderstanding of their position in the matter. We order that they be served to come before us and tell us whether they wish to be heard in this matter or not. We order that C.C.K be served today to appear before us on 29th day of November 2001.

We will make no order or to costs in the preliminary objection.

Dated and delivered at Nairobi this 28th day of November 2001.

1. D.M. Rimita

Judge

2. N.R.O. Ombijah

Judge

28.11.2001