



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Winding Up Cause 15 of 1995**

**In the Matter of Pan African Credit & Finance Ltd & In the Matter of Companies Act**

**Ruling.**

This is an application under Section 228 and 241 (a) of the Companies Act by the Liquidator of Pan African Credit and Finance Limited for leave to institute a suit against Kawahanja Limited and James Kanyotu. Section 228 deals with proceedings against the company while Section 241 (a) deals with actions to be brought in the name of the company is the appropriate section.

The application was served on these last two persons and they filed Grounds of Objection to the orders sought for on the grounds that

1. The claim is tainted by illegality and
2. The claim is time barred.

The objectors further denied owing any money and claim the Applicant does not come to court with clean hands for the reasons alleged.

The objection are serious matters which will have to be addressed by the Court. The question arises when.

The power of the court to allow actions to be brought is in the court's discretion. Clearly if assets are to be collected in by the Receiver for the benefit of the creditors then the court should readily allow actions to be filed to do so.

Is this the appropriate time for the court to go into the merits of the case to see if it is likely to succeed or fail.

In my view it is not, as the suit has not as yet been filed and the court has not seen the averments to be made in the plaint. If after filing it can be struck out for any reason then the court should go into that aspect of the matter or an application made for the purpose.

I do not feel able at this point in time to say that the claim is illegal or that it is time barred as prima facie the intended Plaintiff appears to have a cause of action against the proposed Defendants.

In the result, I allow the application with costs in the cause.

**November 16, 2000**

**Ransley, Commissioner of Assize**