



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MILIMANI LAW COURTS

MISCELLANEOUS APPLICATION NO. 299 OF 2007

**IN THE MATTER OF DELIVERY OF CASH ACCOUNT RECORDS OF PROCEEDINGS
JUDGMENT AND**

**TERMS OF SETTLEMENT IN THE SUBORDINATE COURT AND PAYMENT BY
ELIZABETH CHUNGE T/A**

ELIZABETH CHUNGE & COMPANY ADVOCATES

BETWEEN

**NANJIRA LUKONDO MAKOKHA AND 104
OTHERS.....PLAINTIFFS**

VERSUS

**1. ELIZABETH CHUNGE T/A ELIZABETH CHUNGE & CO.
ADVOCATES.....RESPONDENT**

**2. MUMIAS SUGAR CO. LTD. (THROUGH WETANGULA & CO. ADVOCATES....1ST
INTERESTED PARTY**

**3. THE HON. ATTORNEY GENERAL.....2ND
INTERESTED PARTY**

**4. THE LAW SOCIETY OF KENYA.....3RD
INTERESTED PARTY**

R U L I N G

Two applications are before me. The first is an application by way of Chamber Summons dated 8th November, 2010. It was filed by M/s O P Ngoge & Associates' Advocates for the plaintiffs. It was filed under section 3A of the Civil Procedure Act (**Cap 21 Laws of Kenya**) and Order 42 Rule 1(4) of the Civil Procedure Rules. The application was filed under Certificate of Urgency. The substantive prayer is

as follows: -

“That leave be granted to the plaintiffs/applicants to appeal against the order and ruling of the Honourable Mr. Justice Mwera given on the 8th November, 2010 to the Court of Appeal of Kenya at Nairobi.”

The second application is a Chamber Summons dated 19th November, 2010 filed by Oloo & Oloo Advocates for the defendant. It was filed under the same provisions of the law. The substantive prayer is as follows: -

“That leave be granted to the defendant/applicant to appeal against the order and ruling of the Honourable Mr. Justice Mwera given on 8th November 2010 to the Court of Appeal of Kenya at Nairobi.”

The application dated 8th November 2010 was opposed verbally by Mrs. Oloo for the defendant on the grounds that the person who made the application was a stranger, and that there are no plaintiffs in these proceedings, since the court ruled that there were no such parties. Mr. Ngoge retorted that it was the same decision and ruling of the High Court that the plaintiffs wanted to contest in the Court of Appeal.

Having considered the two applications, I find no reason to disallow any of the applications. The appeal will determine whether the decision of the High Court is correct or not. The parties who were before the High Court cannot be denied the chance to go to the Court of Appeal merely because the High Court has ruled that they were before it wrongly. It will be the Court of Appeal to determine whether they are or were proper parties.

The person who swore the affidavit in the application dated 8th November, 2010 is also not a stranger. Of the more than one hundred plaintiffs, he appears in a list filed in court as number 6. I am therefore of the view that he can swear the affidavit in support of that application.

For the above reasons, I allow both the application. Parties will file their appeals in accordance with the law and applicable rules.

I make no orders as to costs.

Dated and delivered at Nairobi this 1st day of March, 2011.

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GEORGE DULU

JUDGE

In the Presence of

Mr. Ngoge for plaintiffs

Mrs. Oloo for defendants

C Muendo – court clerk