**Githungo v Fidelity Shield Insurance Co Ltd and others**

**Division:** High Court of Kenya at Nairobi

**Date of ruling:** 3 May 2004

**Case Number:** 641/01

**Before:** Ochieng AJ

**Sourced by:** LawAfrica

**Summarised by:** C Kanjama

*[1] Civil procedure – Amendment – Substitution of plaintiff – Suit commenced by receiver of a company whose business was subsequently purchased – Whether purchaser of business entitled to substitution as plaintiff – Whether suit may properly be brought by court-appointed receiver. [2] Civil procedure – Appointment of receiver by court – Management powers of receiver – Whether receiver has power to institute civil proceedings without leave of court – Order XL, rule 1 – Civil Procedure Rules. [3] Company – Receiver – Power to sue in own name – Receiver appointed by court – No leave of court sought prior to institution of suit – Whether receiver had properly instituted suit in his own name – Whether substitution of plaintiff will be allowed after institution of suit.*

**Editor’s Summary** The Plaintiff was the receiver-manager of a company, WDF (IM), which was placed under receivership by court order. He brought a suit in his own name against the First Defendant for compensation in accordance with an insurance contract. Thereafter, the receivership of WDF (IM) was terminated pursuant to a court judgment, which returned the management of the company to the directors. Subsequently another company, WDF (BVI), acquired the assets of WDF (IM). The Plaintiff made the current application to substitute WDF (BVI) as plaintiff in his place. The application was opposed. The Respondents alleged that the receiver had no power to commence an action in his own name, that the receiver had not sought leave of court to commence the action, and that the suit was non-founded and could therefore not be given life by substitution of the Plaintiff. The Court considered whether under company law, and under the terms of the court receivership order, the receiver was entitled to institute civil proceedings during the period of receivership.

**Held** – The appointment of a receiver under the Civil Procedure Rules does not by itself confer upon the receiver absolute power over the company. The receiver only has such power as the court may confer upon him by an order. The management power conferred by the Court in this case did not include a power to institute or defend suits in his own name or without leave (*Lochab Brothers v Kenya Furfural Co Ltd and others* [1982] LLR 77 (CAK) followed). The proposed new plaintiff was incorporated long after the cause of action herein was accrued. Further, no sufficient nexus had been shown between WDF (IM) and WDF (BVI), such as a chose in action, to show that WDF (BVI) was the successor-in-title of WDF (IM). A certificate of change of particulars is not sufficient to prove legal nexus. Since the receiver had wrongly instituted the proceedings in his own name, the said proceedings were a nullity. While no application to strike out the plaint was before the Court, the plaint would be struck out as the only direct and inescapable consequence of the Court’s refusal to substitute the Plaintiff. Application and suit dismissed with costs.

**Cases referred to in ruling**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

*Lochab Brothers v Kenya Furfural Co Ltd and others* [1982] LLR 77 (CAK) – **F**

*Parker v Dunn* 50 EA 195

*Pattni v Ali and others* [1998] LLR 1195 (CCK)