



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

CIVIL CASE NO. 4 OF 2013

EMBU NYANGI NDIIRI PROPOSED SOCIETY

CHAIRMAN - ANDREW IRERI NJERU.....1ST PLAINTIFF/APPLICANT

SECRETARY – ELISHA MIGWI.....2ND PLAINTIFF/APPLICANT

TREASURER – MUGO KANIARU & OTHER MEMBERS.....3RD PLAINTIFF

VERSUS

DANIEL NGANGA KANGI.....1ST DEFENDANT

THE REGISTRAR GENERAL OF SOCIETY.....2ND DEFENDANT

R U L I N G

This suit was filed by the plaintiff against the defendants on 7/3//2013. An affidavit of service sworn on 3rd of May 2013 shows on its face that the defendants were both served with summons to enter appearance together with the plaint.

The affidavit shows that the first defendant was served with the plaint on 15/2/2013, affixed a stamp and a signature on the reverse of the plaint. Unless otherwise proved the court takes this as proper service. As for the service of the chamber summons, the 2nd defendant has not affixed a stamp or a signature. It is stated in the affidavit that the secretary civil litigation refused to sign giving the reason that they had misplaced the file. This kind of service raises doubts as to whether the 1st defendant was served at all. There is no evidence of service of the plaint and the chamber summons on the 2nd defendant. The plaintiffs gave no reasons as to why service as not effected on the second defendant.

The plaintiffs are duty bound to serve every defendant whom they have sued. It was therefore not proper to omit service in this case on the 2nd defendant of the plaint and the chamber summons.

The applicants chamber summons dated 1st August 2013 is brought under Order 1 Rule 20(2) and Order 10 Rules 8-10 of the Civil Procedure Rules. The relevant rule in proceedings against the Government is Rule 8 which provides:-

“No judgment in default of appearance may be entered against the Government without leave of the court and any application for leave shall be served not less than seven days before the return day.”

The applicants are therefore seeking leave under Order 10 Rule 8 to have interlocutory judgment entered against the defendants. The 1st defendant is the principal legal representative of the Government in all suits involving the government of Kenya. The 2nd defendant is the Government department which the plaintiff alleges wronged them by refusing to accord their society registration.

This court has jurisdiction to grant leave under Rule 8 upon being satisfied that the plaintiffs have complied with the law in respect of the suit in question.

The claim against the defendants is for orders that the 2nd defendant through the 1st defendant be ordered to register the plaintiff society namely Nyangi Ndiiriri. This claim resulted from a refusal by the 1st defendant to register the society. Section 11 of the Societies Act empowers the Registrar to refuse registration for reasons set out therein. Appeal against refusal, cancellation or suspension shall be made to the Minister within 30 days of the refusal. In the case before me the appeal should be made to the Attorney General. The plaintiffs have annexed a letter dated 22nd November 2012 addressed to the society's secretary informing them that their appeal was unsuccessful. The letter is signed by one Joseph Onyango for the Registrar of Societies.

There were no reasons given for the refusal in the said letter. The plaintiffs have failed to annex the reasons for refusal to register by the registrar and the reasons for the unsuccessful outcome of the appeal. Even assuming the reasons were not given to the plaintiffs in writing, they ought to have used due diligence to request for them in that they are critical to proving their case.

The first plaintiff in his verifying affidavit has indicated in paragraph (i) that the 2nd and 3rd plaintiffs have given him authority to swear the verifying affidavit on their behalf and that the authority has been annexed. However, no authority was annexed to the plaint. Order 4 Rule 1(3) states:-

“Where there are several plaintiffs, one of them, with written authority filed with the verifying affidavit, may swear the verifying affidavit on behalf of the others”.

The plaintiffs herein sue in their capacity as the representative of the proposed Nyangi Ndiiriri Society members. The authority to sue signed by the members has not been annexed to the plaint as required by the law.

The perusal of the plaint and its annexures, it is clear that the cause of action arose in Nairobi. Section 15 of the Civil Procedure Act requires that every suit shall be instituted in a court within the local limits whose jurisdiction the defendants reside. The defendants in this suit have their registered head offices in Nairobi, the same place where the cause of action arose. This suit ought to have been filed in Nairobi as required by the law. It appears that the suit was filed in Embu for the convenience of the plaintiffs whose address in the plaint show they live and work in Embu. The plaintiffs are therefore in contravention of Section 15 of the Act.

I come to the conclusion that the chamber summons dated has no merit for the foregoing reasons and it is accordingly dismissed. Similarly the suit of the plaintiffs is non starter for lack of authority and failure to serve the defendants as explained herein. On its own motion, the court strikes out the suit for non-compliance with the law. The plaintiffs will meet their own costs of the suit.

DELIVERED, DATED AND SIGNED AT EMBU THIS 25TH DAY OF FEBRUARY, 2015.

F. MUCHEMI

JUDGE

In the presence of the plaintiffs

F. MUCHEMI

JUDGE