



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**ELC CASE NO.431 OF 2012**

**ASTROL ENTERPRISES LTD..... PLAINTIFF/APPLICANT**

**VERSUS**

**HASSAN ABDUL RAMAH ..... 1<sup>ST</sup> DEFENDANT/RESPONDENT**

**OL KEJUADO COUNTY COUNCIL..... 2<sup>ND</sup> DEFENDANT/RESPONDENT**

**R U L I N G**

1. The Applicant/Defendant's **Notice of Motion** dated **17.4.2014** seeks to strike off the instant suit. The same motion is anchored on the provisions of order 51 Rule 1 Civil Procedure Rules, Section 9(c) and 34(1) of the Advocates Act Cap 16. The motion is based on the grounds on the face of the application and it is supported by an affidavit sworn by Joseph Mwangi Kamaru on 17.4.2014. The Respondent/Plaintiff opposes the application via an affidavit sworn by Miriam Wangare Birgen on 16.6.2014.
2. The Applicant's case is that the instant suit was filed in Milimani High Court Nairobi through the form of Oyiembo and Co. Advocates which the pleadings were signed by one Robert Oyiembo who did not have a valid practising certificate. Upon enquiry by the Applicants the LSK on 11.3.2014 confirmed that there was no law firm in existence in the names of Oyiembo and Co. Advocates and that only advocate Oyiembo Robert Otieno was in their records. The LSK also confirmed that the said advocate did not have valid practising certificate for the year 2013 and 2014 as he was a state counsel. The Applicant thus seeks the court to strike out the pleadings on record.
3. The Respondent case is that the instant suit was filed on 23.10.2012 through the local firm of Oyiembo & Co. Advocate. As there was no judge in Machakos law courts dealing with land matters. The same suit was taken to Nairobi as it was under certificate of urgency. The Applicant respondent avers that the advocate Robert Oyiembo who signed the pleadings had a practising certificate vide annexure MWB.1; and thus a qualified person. The court finds the only issue arising as, whether the pleadings were signed by unqualified person and thus render the suit to be struck out?
4. The Complaint dated 23.10.2012 was filed on 16.11.2012 at Machakos High Court Civil registry. The LSK letter dated 22.5.2014 confirm that Robert Oyiembo Advocate had a valid practising certificate for the year 2012 having paid for it on the 8.2.2012. The LSK confirmed that only the years 2013 and 2014 the advocate above did not have the practising certificate as he was a state counsel.
5. The court therefore finds that the pleadings were signed by a qualified person and thus the suit is properly in court. The court thus makes the following orders.

1. The Notice of Motion dated 17.4.2014 is dismissed.
2. Costs in the cause.

**Dated and Delivered at Machakos this 13<sup>th</sup> day of March, 2015.**

**CHARLES KARIUKI**

**JUDGE**