



REPUBLIC OF KENYA

HIGH COURT AT NAIROBI (NAIROBI LAW COURTS)

ENVIRONMENTAL & LAND CASE 1736 OF 2000

NGOINGWA COMPANY LIMITED.....PLAINTIFF

VERSUS

DORCAS WANJIKU IKINU.....DEFENDANT

RULING

I have been requested to make a ruling on the fate of this case arising from the fact that the Advocate who filed the complaint, Mr. Vincent M. Muia, did not have a practising certificate from the Law Society of Kenya in the year 2000 when this case was filed. A letter dated 15th March, 2003 from the Law Society of Kenya was tendered to the Court by Mr. Siagi who is acting for the Defendant herein.

Mr. Siagi has requested the Court to dismiss this suit on this ground.

I have perused the Court file and have established that indeed the complaint herein was filed by the law firm of Muia V.M & Co Advocates on 25th October, 2000. The case was later taken over by the law firm of G.N. Gichuhi Ngari & Company Advocates on 28th March, 2008 who are the advocates still on record for the Plaintiff.

The issue for determination by this Court is whether the failure of Mr. Muia from taking out a practising certificate in the year 2000 when he filed the complaint herein warrants the striking out of this case?

Article 159 (2) (d) of the Constitution provides as follows:

“In exercising Judicial authority, the Courts and Tribunals shall be guided by the following principles-

Justice shall be administered without undue regard to procedural technicalities.”

This provision points to the constitution's stance visq vis situations such as the one facing us in this particular case, specifically whether a suit can be struck off because counsel did not fulfill a procedural requirement of taking out annually a practising certificate.

Further, can an innocent client be made to suffer for the omission of their counsel?

Lastly, why did Counsel for the Defendant deem it fit to hold onto the letter from the Law Society for 10 years before producing it now?

It is my view that denying the Plaintiff herein the justice they seek before this Court solely on the ground that their first advocate did not hold a Practising Certificate amounts to adherence to technicalities which

goes contrary to the constitutional provision cited above. Further, this omission was not of the client but of its advocate.

It would be unjust to visit the mistakes of Counsel upon an innocent client, further, I do not see any good reason why the Defendant has waited for 10 years to raise this issue now.

In light of the foregoing, I decline to strike off this suit on this account and hereby order that the hearing of this now old matter to proceed.

SIGNED & DELIVERED THIS 22nd DAY OF February 2013

**MARY M. GITUMBI
JUDGE**