



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

**AT NAIROBI**

**CIVIL CASE NO. 226 OF 2010**

**SHAFINA MAGRE.....1<sup>ST</sup> PLAINTIFF**

**KHURUM MAGRE.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**AGA KHAN HEALTH SERVICES (K) LTD & ANOTHER.....DEFENDANT**

**RULING**

Application dated 18/1/2012 is by Notice of Motion. Orders sought are:-

1. The defences of the first and second defendants dated 2<sup>nd</sup> June and 3<sup>rd</sup> June 2010 respectively be struck out with costs to plaintiffs.
2. The judgment be entered for the plaintiffs against the defendants as prayed in the plaint.

The grounds upon which the application is based are that the Defendants defences were filed without accompanying witness statements, List of copies of documents in contravention of mandatory provisions of Order 7 rule 5 Civil Procedure Rules. And the Defendants have persisted in failure to comply. And that the defences on record are incompetent and should be struck out with costs to the plaintiffs.

The application is supported by affidavit of Mohamed Zahir Ud-Din Ahmad Malik which shows that both defendants filed their defences on 3<sup>rd</sup> June 2010 and the pleadings closed. The applicants proposed their issues and forwarded the same to Defendants for their response within 14 days.

The defendants failed to respond. However as between plaintiffs and the first and second defendants proceeded to file issues on 14/9/2010.

On 21/9/2010 the first Defendant advocate served a list of copies of documents without the witness statements and the second defendant advocate filed supplementary list of documents.

It is sworn that Defendants have not furnished witness statements in compliance with the procedure. The applicant has granted indulgence but the Defendants have neglected and refused to furnish their witnesses statements and documents as aforesaid. It is sworn that the Defendants are not interested in a timeous and expeditious disposal of this suit and the Defences ought to be struck off.

An affidavit sworn by Zul Mohamed on 15<sup>th</sup> February 2012 was served on the advocate for first

Defendant . Another affidavit sworn by Samir Inamdar on 16/2/2012 was filed on 17/2/2012 for second defendant.

It appears that the suit was filed by the plaintiff before the commencement of new Rules which came into effect on 17/12/2010.

The plaintiffs have not served a pre-trial questionnaire within prescribed time. Furthermore the plaintiff and first defendant have not completed discovery of hospital records and the case has not been listed. The application is without merit which is hereby dismissed.

Each party shall bear its costs considering none of them have completely complied with the new Rules.

Orders accordingly.

**Dated and delivered this 27<sup>th</sup> day of March, 2012**

**J. KHAMINWA  
JUDGE**