



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL SUIT 161 OF 2010
NGOMENI SWIMMERS LIMITED.....PLAINTIFF
-VERSUS-
KATANA CHARA SULEIMAN.....DEFENDANT

RULING

1. Through his application filed on 23rd February, 2011, the defendant asks the court to strike out the entire suit on several grounds, and particularly, that:

- (a) The name of the alleged advocate who filed the suit does not exist in the Roll of Advocates
- (b) The alleged firm of Wesley John and Associates Advocates or Wesley John and Austin Associates advocates is an unregistered firm, owned by a person who is not qualified as an advocate of the High Court of Kenya.

The application is expressed to be brought under Section 1A (1), (3), 1B 3, 3A (inter-alia) of the Civil Procedure Rules and is supported by the defendant's affidavit. Surprisingly neither the Advocates Act nor rules made thereunder were invoked.

2. In his replying affidavit, filed on 21st March, 2011, Kamau Kinyanjui (now Wesley John Kamau), counsel for the Respondent stated that he was duly authorised to practice law in 2010 and 2011 vide certificates Nos. 4933 and 0921 respectively. That the firm of Wesley John and Associates Advocates was duly registered under the Registration of Business Names Act in December, 2007 and thereafter as Wesley John, Austin & Associates in 2010. That he signed the pleadings herein on behalf of the firm.

3. He disputed an annexure to the Defendant's affidavit marked "KCS-1" denying the existence of a registered law firm in the name of Wesley John and Associates Advocates or Wesley John & Austin Associates Advocates. In a further affidavit, he attached a deed poll and gazette notice by which his names changed from Kamau Kinyanjui and John Kamau to Wesley John Kamau, in May, 2011.

4. The application was heard before me on 19th March, 2012, the arguments generally taking cue from the filed respective affidavits.

As I see it, four key questions arise for determination;

1. Who is Wesley John?
2. Did the firm of Wesley John & Associates exist as at 22nd December, 2010?
3. If such a firm existed was it capable of filing a competent suit?
4. What is the effect of the Notice of change of Advocates filed on 17th February, 2011, bringing in the firm of M/s Wesley John Austin & Associates Advocates to act for the Plaintiff, in place of M/s Wesley John & Associates Advocates?
5. Having carefully considered the material placed before me in respect of the application I take the following view:

Kamau John Kinyanjui is the same person as Wesley John or Wesley John Kamau. There is ample evidence to that effect.

Kamau Kinyanjui, the deponent to the replying affidavit filed on 21st March, 2011 and Wesley John Kamau deponent to the further affidavit of 25th November 2011, are one and the same person by virtue of the change of name gazetted on 20th May 2011 (Gazette Notice No. 5596). It would appear though that the name Wesley John Kamau was assumed and used in the registration of a business name known as Wesley John & Associates in December 2007, and in the change of particulars in October, 2010, before the requisite legal change of name. Equally, in December 2010, the business name WESLEY JOHN ASSOCIATES was purported to be the firm acting for the plaintiffs herein. Notably, the name ADVOCATES was inserted at the end of the business name on the plaint.

6. On the second question there can be no dispute that Kamau John Kinyanjui as he was known until May, 2011 had a valid practising certificate in that name, for the years 2010 and 2011. He was therefore entitled to practise law in his own name or the name of a past or present member or members of a firm. According to the Plaint, the same was drawn and filed by M/s Wesley John & Associates Advocates. Mr. Wesley John Kamau says he signed the pleadings on behalf of that firm in his capacity as an advocate in the firm. Rule 12 of The Advocates (Practice) Rules is in the following terms:

“No advocate shall practise under a name other than his own name or the name of a past or present member or members of the firm”

7. Mr. Wesley John Kamau’s change of name became effective with the gazettelement of his adopted name **Wesley John Kamau**, on 20th May, 2011. Hence, in 2010 he could only practice in his own name or the name of past or present firm’s member(s).

There is no doubt that even back in 2010 he used the name Wesley John in reference to himself and not any other person. Secondly, his alleged partner Austin Micah Shikhule had joined him in October, 2010 hence the creation of the new business name of Wesley John Austin and Associates about which I will be commenting later.

8. Despite the said change of business name purported in annexure WJK 4(ii), the same was not used in December, 2010 when the suit was filed. Hence the attempt by Mr. Kinyanjui to validate the pleadings through the change of name document only adds confusion of the matter. Besides, in legal practise, the use of the business name Wesley John and Associates or Wesley John, Austin and Associates without the word “Advocate” constitutes a direct violation of Rule 11 of The Advocate (practice) Rules which states in part:-

“No advocate of firm of advocates shall, in connexion with the practice of the advocate or firm, cause or permit himself or firm name to be described otherwise than as “advocate” or “Advocates”, as the

case may be...”

9. As at 22nd December, 2010 when this suit was filed by the purported Wesley John & Associates advocates what was in place and upon which Mr. Kinyanjui has placed reliance was the business name certificate of registration WJK(i) which states:

I HEREBY CERTIFY THAT WESLEY JOHN KAMAUcarrying on business under the business name(s) of WESLEY JOHN & ASSOCIATES at plot No. 209/2012 Parklands, Chemilil Road, Nairobi P O Box 22204 – 00400 Nairobi (sic)...

Clearly this certificate does not refer to WESLEY JOHN & ASSOCIATES ADVOCATES, as purported in the plaint. And if the business contemplated in the annexure WJK 4(i) is a legal practice, it falls foul of Rule 11 and 12 of The Advocate (Practice) Rules.

10. In his two affidavits Wesley John Kamau has attacked the defendant’s annexure “KCSI” dated 22nd February, 2011. The same is a letter from the Law Society of Kenya and states in part:

RE: WESLEY JOHN & ASSOCIATES ADVOCATES

“We write to confirm that there is no advocate by the name Wesley John. We also confirm that there is no registered law firm in the name of Wesley John & Associates or Wesley John & Austin Associates Advocates. The advocates trading in the names are doing so illegally in contravention of the Advocates Practice Rules”

That, with respect is the correct position as at 22nd February, 2011. Then, the present Wesley John Kamau was known as Kamau Kinyanjui (and John Kamau) and should have been practising in that name. Regarding Austin Shikhule there is no evidence whatsoever that he had a valid practising certificate at the time material to this application.

Mr. Wesley John Kamau poured cold water on the credibility of the letter from the Law Society of Kenya by casting doubt on the capacity of the signatory thereto. He had the opportunity but has not annexed any document to contradict the contents of the letter in question or to demonstrate that it is a forgery. He has not tendered any practising certificate in the name of Wesley John or Wesley John Kamau as at 2010 when this suit was filed.

11. The business of practising advocates is regulated under the Advocates Act, and I consider it mischievous that Mr. Wesley John Kamau has attempted to front a certificate of registration of a business name to camouflage the apparent flouting of the express provisions of The Advocates (Practice Rules).

In effect Mr. Wesley John Kamau was practising law under a disguise, the very object of the proscription in Rule 12 of The Advocates (Practice) Rules. He cannot convincingly take refuge under the business name certificate or invoke Section 9 of the Advocates Act as conferring competence upon him.

12. Hence my considered answers to the second and third questions are that:

(a) As at December, 2010, Wesley John Kamau and Austin Micah Shikhule were officially trading in the name and style of WESLEY JOHN & AUSTIN ASSOCIATES.

(b) Neither Wesley John Kamau nor Austin Micah Shikhule had the requisite advocate’s practising certificates in those names, as indeed the legal person Wesley John Kamau did not even exist at the time. Thus no competent legal firm in the name of M/s Wesley John & Associates Advocates or Wesley John & Austin Associates Advocates existed as anticipated under the Advocates Act and The Advocates (Practice) Rules.

The suit filed by the firm of Wesley John and Associates Advocates is therefore incompetent.

It also follows that the Notice of Change of Advocates dated 17th February, 2011, is of no consequence and only serves to compound the irregularity attendant to these proceedings. In the final analysis, I find that this suit was filed by a firm of unqualified persons, and must be struck out with costs.

13. I find it necessary to comment, in conclusion, that it is disappointing that valuable court time has been taken up in matters peripheral to the parties' dispute. In particular, the court deprecates the conduct of Mr. Wesley John Kamau. As a senior officer of the court he appears to have chosen to engage the court in a game of smoke and mirrors, rather than take full responsibility for filing the suit in the name of a fictitious advocates' firm rather than in his own name. He will personally bear the costs occasioned by this application and the entire suit.

Delivered and signed this **28th** day of **May, 2012**

In the presence of Mr. Michira for the defendant/applicant. Plaintiff/respondent absent.

C. W. MEOLI

JUDGE