



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CIVIL CASE 82 OF 2011

SAMUEL KIPLAGAT SIGEI.....APPLICANT

VERSUS

JULIUS KIMAIYO KIBET.....RESPONDENT/PLAINTIFF

AND

ATTORNEY GENERAL.....1ST DEFENDANT

KENYA POWER & LIGHTING CO. LTD.....2ND DEFENDANT

RULING

The respondent in this application, Julius Kimaiyo Kibet, has brought the present action against the Attorney General and Kenya Power and Lighting Company Limited (the 2nd defendant) for general damages for malicious prosecution and for special damages.

The applicant in the instant application, Samuel Kiplagat Sigei, an employee of the 2nd defendant in the motion dated 6th July, 2011 seeks to be joined in the proceedings as an interested party on the grounds that the respondent has made false allegations against him which portray him as corrupt; an allegation that is likely to expose the applicant to disciplinary process by the 2nd respondent; that the allegations are malicious and are intended for ulterior motive.

In response, the respondent has deposed that in his suit, he has not made any claims against the applicant to warrant the latter being joined in the proceedings. He has denied making any allegation of corruption against the applicant.

The application is brought under the discretionary powers of the court in **Section 1A** and **1B** of the **Civil Procedure Act**, perhaps because it is a misnomer to refer to the applicant as interested party.

For the reasons I will shortly give, the applicant ought to have applied to be joined in the proceedings as a defendant. **Order 1 rule 3** of the **Civil Procedure Rules** provides that:

“3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

The only question is whether the applicant has made a case for joinder as a party in these proceedings.

The respondent in paragraphs 5 and 6 of the plaint dated 8th April, 2011 has deposed that:

“5. One Joel Maina intended the plaintiff to assist him to

trace one Samuel Sigei who is an employee of the 2nd Defendant so that Sigei can assist Maina to solve the problem of the transformer which Maina had damaged.

6. The issue of the damaged transformer belonging to the

2nd defendant was not solved by the 2nd defendant’s employee one Sigei and therefore it was reported to the police station.”

Emphasis added)

The respondent has filed his statement in which out of 27 paragraphs 12 deal exclusively with the role played by the applicant in the events leading to the arrest of Maina and the respondent.

Specifically the respondent has averred that the applicant initially demanded Kshs.5,000/= as a bribe to sort out the issue of power black-out arising from the damaged transformer. Between Maina and the applicant, only Kshs.3000/= was raised and paid to the applicant.

Later that day, the applicant is said to have demanded for more than Kshs.20,000/=. The respondent withdrew Kshs.30,000/= which he gave the applicant to cover up for the damaged transformer but with the understanding that he would be refunded by Maina. The applicant further demanded Kshs.300,000/= arguing that the issue was very serious and that Maina would be arrested if the money was not availed. Maina agreed to avail Kshs.150,000/= if given time. In the meantime, he gave the applicant Kshs.20,000/=.

On 9th July, 2009, Maina sent to the applicant Kshs.20,000/= by M=Pesa. It is apparent from the respondent’s statement as summarized above that he blames the applicant for his arrest. The statement is categorical that the applicant received bribes to facilitate a resolution of the issue of the damaged transformer but failed. In other words, the applicant must have acted in concert with his employer, the 2nd defendant in reporting the matter to the police who then charged the respondent yet the applicant had received money to ensure this matter did not get to that stage.

The applicant in my view, considering the foregoing, qualifies in terms of **Order 1 rule 3** aforesaid to be joined in these proceedings as the 3rd defendant.

For these reasons, the application is allowed. The applicant is accordingly joined in these proceedings.

Costs to be in the cause.

Dated, Signed and Delivered at Nakuru this 20th day of July, 2012.

W. OUKO

JUDGE