



PASCAL JOSEPH
FONDO.....PLAINTIFF

V E R S U S

BWANA BIN BWANAADI
BAKARI.....DEFENDANT

RULING

The Estate of Bwana Bwanaadi has through its legal representative Omar Bwana Bwanadi asked this Court to grant the following prayers-

- (a) The service of summons to enter appearance effected on Mr. Mohamed Bwana Bwanaadi be and is hereby set aside for being irregular service;*
- (b) The Notice of Appointment of Advocate filed by the said Mohamed Bwana Bwanaadi is expunged from the record for being incompetent;*
- (c) The proceedings taken and orders made ex-parte herein are set aside ex-debito justitiae for want of a competent Defendant capable of obeying the orders;*
- (d) Directions on the competence and propriety or otherwise of the present suit be given now that the Defendant names herein is deceased, and was so Deceased at the commencement of the suit;*

The gravamen of the application is that the person named as the Defendant Bwana Bin Bwanadi Bakari died on 13th February 1994. If these were true then the suit is a nullity as a suit against a dead person is still born.

The Plaintiffs do not think that the Defendant is dead and point to the Notice of Appointment of Advocate dated 30th November 2011. I reproduce that Notice-

“NOTICE OF APPOINTMENT OF ADVOCATE UNDER PROTEST

I, BWANA BWANADI BAKARI, the Defendant named in the plaint filed herein but who has not been served with summons to enter appearance in this suit do hereby appoint UNDER PROTEST Mr. Stephen Macharia Kimani Advocate to represent me in this matter. My address of service for the limited purpose of setting aside service of process is C/o Stephen Macharia Kimani Advocate, 1930 Building, Meru road, 1st Floor, Opp. KCB Town Centre Branch, P.O. Box 1520 80100 Mombasa.

Dated at Mombasa this 30th day of November 2011.

BWANA BIN BWANADI BAKARI

Drawn by

Bwana Bin Bwanadi Bakari
P.O. Box 273
Mtwapa.
To be served upon

0. **Stephen Macharia Kimani,**

Advocate

1930 Building, Meru Road, P.O. Box 1520 80100, Mombasa

0. **Gikandi and Co. Advocates**

Plot No. 352/21
Sauti ya Kenya Road
Mombasa”

In the affidavit in support of the application the administrator has deposed that the said Notice was signed, not by the Deceased, but by Mohamed Bwana Bwanaadi Bakari who is a son of the Deceased. As said earlier if the Defendant herein is dead then it would be the end of this matter. The Court needs to be satisfied that the person named as the Defendant is indeed dead before making such a drastic order.

Towards this, the Court must establish the true identity of the person who signed the Notice of Appointment in the name of the Defendant. As the Court is told that it is Mohamed Bwana Bwanaadi Bakari who signed that appointment then that would be good place to start.

This Court does hereby issue summons upon Mohamed Bwana Bwanaadi Bakari to appear before it on 20th September 2012. The summons shall be served by the firm of Stephen Macharia Kimani Advocate.

Dated and delivered at Mombasa this 28th day of August, 2012.

F. TUIYOTT

JUDGE

Dated and delivered in open court in the presence of:-
Gikandi for the Plaintiff
Kimani for the Defendant
Court clerk - Moriasi

F. TUIYOTT
JUDGE