



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT NO.1983 OF 1977

MEKA SISAL DEVELOPMENT LTD.....PLAINTIFF

VERSUS

THE ATTORNEY GENERAL.....1ST DEFENDANT
EMBU COUNTY COUNCIL.....2ND DEFENDANT
MBEERE COUNTY COUNCIL.....3RD DEFENDANT

R U L I N G

1. The applicant, who is Embu County Council, was the 2nd defendant in this suit. The Attorney General was the 1st defendant. The suit which was filed in the year 1977, was heard and judgment delivered in favour of the plaintiff against the applicant and the Attorney General on 24th June, 2010. Subsequently on 17th January, 2011, the applicant served a notice of a claim for indemnity on the Attorney General under Order 1 Rule 24 of the Civil Procedure Rules. The applicant sought full indemnity for the decretal sum and costs.

2. The Attorney General did not respond to the applicant's notice, thereby giving rise to the current application in which the applicant seeks judgment in its favour against the Attorney General in terms of the notice of claim for indemnity.

3. There was no response to the application for judgment against the Attorney General. Nonetheless, at the hearing of the application, Mr. Menge appeared for the Attorney General and opposed the application maintaining that it contravenes Order 10 Rule 8 of the Civil Procedure Rules as the applicant has not sought leave from the court for judgment to be entered against the Attorney General.

4. I have considered this application. Order 1 Rule 24 states as follows:

“24. (1) Where a defendant desires to claim against another person who is already a party to the suit

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(a) That he is entitled to contribution or indemnity; or

(b) That he is entitled to any relief or remedy relating to or connected with the original subject-matter of the action which is substantially the same as some relief or remedy claimed by the plaintiff; or

(c) That any question or issue relating to or connected with the said subject-matter is substantially the same as some question or issue arising between the plaintiff and the defendant, and should properly be determined not only as between the plaintiff and the defendant, but as between the plaintiff and the defendant and such other person, or between any or either of them,

the defendant may without leave issue and serve on such other person a notice making such claim or specifying such question or issue.

(2) No appearance to such notice shall be necessary but there shall be adopted for the determination of such claim, question or issue the same procedure as if such other person were a third party under this order.

(3) Nothing contained in this rule shall operate or be construed so as to prejudice the rights of the plaintiff against any defendant to the action.”

5. In my understanding the above provisions go hand in hand with Order 1 Rules 15 – 21 of the Civil Procedure Rules 2010, which relates to third party proceedings. Thus, the 2nd defendant’s claim for indemnity ought to have been brought before the plaintiff’s suit was heard. Further leave of the court to enter judgment against the Attorney General ought to have been obtained before the application for judgment was made. In this case, the applicant filed his indemnity notice many years after the pleadings were closed and almost one year after the suit was heard and judgment entered against the applicant. Moreover, the applicant did not obtain leave from the court to apply for judgment against the Attorney General. This is not only a requirement under Order 1 Rule 20(2) of the Civil Procedure Rules 2010, but also is a requirement under Order 10 Rule 8 of the Civil Procedure Rules 2010.

6. I therefore find that the application dated 17th February, 2011 is incompetent as it has not been brought in accordance with the appropriate provisions of the Civil Procedure Rules. Accordingly, the application is rejected. I make no orders as to costs.

Dated and delivered this 20th day of May, 2011

H. M. OKWENGU
JUDGE

In the presence of: -
Adere H/B for Njagi for the applicant
Advocate for the respondent absent
Kosgei - Court clerk