



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CIVIL SUIT NO. 206 OF 2011**

**GILBERT CHEGE  
T/A ELDORET CONFERENCE CENTER:.....PLAINTIFF**

**VERSUS**

**KENYA INSTITUTE OF APPLIED SCIENCE:.....1<sup>ST</sup> DEFENDANT  
JACKSON ADEDE IRAVUNAH:.....2<sup>ND</sup> DEFENDANT  
EVELYN IRAVUNAH:.....3<sup>RD</sup> DEFENDANT**

**RULING**

The 2<sup>nd</sup> defendant, **Jackson Adede Iravunah** and the 3<sup>rd</sup> defendant, **Evelyn Iravunah**, have applied, by Chamber Summons dated 16<sup>th</sup> September, 2010 for one order namely that their names be struck out for being improperly enjoined in this suit. They contend that as directors of the 1<sup>st</sup> defendant they cannot be sued in their own names for claims against the 1<sup>st</sup> defendant.

The plaintiff, on his part, contends that at the time he dealt with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, they did not disclose that they were acting as directors of the 1<sup>st</sup> defendant and it would now be unfair to accede to the order they seek, since they are necessary parties.

The plaintiff, in his plaint, describes the 1<sup>st</sup> defendant as a private institute having a common seal with registered offices in Nairobi and Eldoret. In paragraph 5 of the same plaint, he avers that he entered into a contract with the defendant to buy hostel business from the 1<sup>st</sup> defendant. In the agreement exhibited by the plaintiff, the only parties thereto are the plaintiff and the 1<sup>st</sup> defendant. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants are mentioned nowhere.

It is plain that the plaintiff does not appreciate the separate corporate identity of the 1<sup>st</sup> defendant hence his contention that he did not know that he was dealing with the 2<sup>nd</sup> and 3<sup>rd</sup> defendants as the directors of the 1<sup>st</sup> defendant yet the agreement of sale which is the foundation of his claim is in the name of the 1<sup>st</sup> defendant as the only seller of the hostel business. It is a basic principle of Company Law that a company has a distinction and separate personality from its shareholders and directors even where the directors are also the shareholders. **(See the precedent setting case of Salomon -Vs- Salomon and Company Limited [1957] AC 22.)** As a separate legal entity, its property is distinct from that of its shareholders and directors. It follows therefore that if the company herein sold its property or business to the plaintiff, it is only proper that it bears the consequences. In the premises, I find and hold that the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, as directors of the 1<sup>st</sup> defendant have no capacity to be sued for wrongs committed by

the 1<sup>st</sup> defendant and have therefore improperly been joined in this suit.

I accordingly allow the 2<sup>nd</sup> and 3<sup>rd</sup> defendants' application dated 10<sup>th</sup> September, 2010 and order that the two be and are hereby struck out of this suit.

As the plaintiff appears to have dealt with the two, the proper order on costs is that each party bears its own costs.

It is so ordered.

**DATED AND DELIVERED AT ELDORET**

**THIS 7<sup>TH</sup> DAY OF DECEMBER, 2011**

**F. AZANGALALA**

**JUDGE**

**Read in the presence of:**

**Mr. Kitur H/B for Mr. Kathili for the plaintiff and**

**Mr. Chepkwony H/B for Mr. Andambi for 2<sup>nd</sup> & 3<sup>rd</sup> Defendants**

**F. AZANGALALA**

**JUDGE**

**7<sup>TH</sup> DECEMBER, 2011**