

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI Civil Case 22 of 2006

FRANCIS JAMES NDEGWA
JOHN NDEGWA GITONGA
SHADRACK GICHUKI KARINGA
GICHEHA RIBUTHI

JOHN GITHINJI NJERU.....PLAINTIFFS

JOSPHAT MWATHI

AMOS KARIMI

GOERGE NDIRITU GACHAJA

DEDAN KIAI

VERSUS

GRACE WAIRIMU NGAMBI.....DEFENDANT

RULING

FRANCIS JAMES NDEGWA on behalf of himself and nine other, the plaintiffs herein, sued **GRACE WAIRIMU NGAMBI**, the defendant herein, vide the Complaint dated 25th April 2006 in which they sought judgment in the following terms:

- (a) *All the plaintiffs be adequately compensated.*
- (b) *Costs of this suit.*
- (c) *Any further or even better relief that this court may deem fit to grant.*

The Defendant filed a defence to deny the Plaintiffs' claim. When the suit came up for hearing, the Defendant raised a Preliminary Objection in the notice dated 7th May 2007 in which she sought for the suit to be dismissed on the following grounds:

- (a) *The suit does not disclose any reasonable cause of action as the same is frivolous, vexatious, bad in law and an abuse of court process.*

- (b) ***The verifying affidavit is defective.***

- (c) ***The plaint is grossly defective.***

- (d) ***The report did not mention the Plaintiffs or refer to them in any way as alleged in the plaint.***

The Preliminary objection is the subject matter of this ruling.

It is the argument of Mr. Gathiga Mwangi that the nine Plaintiffs have not been properly described under *Order VII rule 1 (1) (b)* of the Civil Procedure Rules. It is further argued that the 1st Plaintiff who purported to sign the plaint and the affidavit on behalf of the other nine (9) Plaintiffs, was not authorized to do so. It is also contended that the verifying affidavit contravened the provisions of *Section 35* of the Advocates Act. It is further pointed out that paragraph 9 of the Plaint contains Kikuyu words without the English translation or reision – contrary to *Section 9* of the Civil Procedure Act.

Mr. Macharia, learned advocate for the Plaintiffs, conceded that the Plaintiffs' plaint contained the aforesaid defects. He beseeched this court to grant him leave to amend the plaint to correct the errors.

I have carefully considered the defects pointed out by Mr. Gathiga Mwangi, learned advocate for the Defendant. I have already given a brief summary of those defects and I do not need to repeat the same here. Mr. Macharia has admitted the defects. The question to be determined by this Court is whether or not those defects can be cured by amendment. It is a requirement under *Order I rule 12 (1) and (2)* of the Civil Procedure Rules that where one party alleges he was authorized to appear, plead or act for any other party, he or she must exhibit the duly executed authority in writing. In this case, Francis James Ndegwa merely said that he was authorized to sign the plaint and the affidavit on behalf of 9 others. Such a defect cannot be cured by amendment. The defect was pointed out in the notice of Preliminary Objection on 7th May 2007. It was also indicated in paragraph 8 of the defence dated 29th May 2006. The Plaintiffs had been given ample notice to correct the error but unfortunately they waited until when the matter was called out. In the circumstances of this case the suits by the other nine (9) plaintiffs save for Francis James Ndegwa stand struck out as the plaint was not verified contrary to *Order VII rule 1 (2) and (3)* of the Civil Procedure Rules. It has also been pointed out that the verifying affidavit does not comply with the provisions of *Section 35* of the Advocates Act. This defect is admitted and I do not think it can be cured by amendment. The verifying affidavit is hereby ordered struck out. This leaves the plaint unverified just like those of the nine (9) Plaintiffs. The other defects can be cured by amendments.

The end result is that the Plaint dated 25th April 2006 is hereby ordered struck out with costs to the Defendant.

Dated and delivered at Nyeri this 31st day of March 2010.

J. K. SERGON
JUDGE

In open court in the presence of Mr. Macharia for the Plaintiffs and Gathiga for the Defendants.