



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Suit 238 of 2009

JUST TIP TOP COLLECTIONS LIMITED.....PLAINTIFFS/RESPONDENT

Versus

MODWAYS INVESTMENTS LIMITED.....DEFENDANTS

RULING

This is a ruling in Chamber Summons dated 4th June 2009 filed by the Defendant under Order VI Rule 13 (1) (b), (c) and (d) of the Civil Procedure Rules. The Applicant without mentioning specific provisions adds that the Chamber Summons is also brought under “The Inherent Jurisdiction of the Court.”

The Respondent did not file a replying affidavit or grounds of opposition, though his Counsel, Mr. Nyamu, addressed the court in reply to what Mr. Muchiri said for the Applicant.

Since I find no evidence from the Applicant in support of allegations made under Order VI Rule 13 of the Civil Procedure Rules, I would have rejected the Applicants Chamber Summons had it not been brought to my attention during the hearing that there is an undisputed fact that the Advocate who filed this suit for the Plaintiff did not have a practicing certificate as mandated by Section 9 of the Advocates Act (Cap 16 Laws of Kenya) which states that:-

“Subject to this Act, no person shall be competent to act as an advocate unless:-

(a)

(b)

(c) he has in force a practicing certificate.”

I do note that grounds in the face of the Chamber Summon dated 4th June 2009 are all to that effect and are therefore not consistent with requirements in Rule 13 of Order VI aforesaid.

But lack of a practicing certificate is an undisputed fact in the proceedings before me as I have said. That being the position, I cannot close my eyes as definitely this is a suit which is null and void ab-initio and should not be allowed to stand despite the nice things that

have been brought to my attention by Mr. Nyamu, learned Counsel for the Respondent. I do reject what he told me as Section 9 of the Advocate's Act is clear and mandatory.

Accordingly, Chamber Summons dated 4th June 2009 is hereby allowed and I do order the Plaintiffs' suit against the Defendant struck out with costs to the Applicant/Defendant.

Dated this 26th day of March 2010.

J.M. KHAMONI

JUDGE

Present:

Mr. Muchiri for the Applicant

Mr.Mwendwa for Mr. Nyamu for the Respondent

Court Clerk: Kabiru.