



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS

Civil Case 76 of 2007

1. SAMUEL MUIYA MANYUNZA

2. JACKSON MUNYAO

3. MUTUKU NGEI MASAKU

4. SIMON MUSEMBI BWIKA

5. MATHEKA MWAULU.....PLAINTIFFS

VERSUS

1. CO-OPERATIVE BANK OF KENYA LTD

2. MASAKU TOBACCO WHOLESALERS LTD.....DEFENDANTS

RULING

1. The 3rd Plaintiff in this suit, one Mutuku Ngei Masaku by his Application dated 6.7.2009 seeks orders that his name be struck off the suit and that the police be called to investigate whether a signature appended to the Verifying Affidavit sworn on 18.9.2007 is a forgery.
2. I have taken into account all the Affidavits on record and the submissions by advocates for the parties. The matter portends no difficulty. Order 1 Rule 2 of the Civil Procedure Rules provides as follows:-

“Where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may either on the application of any party or of its own motion put the plaintiffs to their election or order separate trials or make such other orders as may be expedient.”
3. The 2nd Plaintiff has in pursuance of his right to opt out of the suit has asked that his name be struck off the suit. That is his right and he has elected to do so the reasons notwithstanding. Can this court tie him to the suit? It cannot and that is because to do so would amount to an injustice.
4. I will accede to his prayers and will order that his name be struck off the suit and since he has faulted the signature said to be his, then let the DCIO Machakos investigate the matter and file a report in this court within the next 60 days. Further orders will thereafter be made.
5. I shall make no order as to costs.
6. Orders accordingly.

ISAAC LENAOLA

JUDGE

Countersigned and delivered at **Machakos** this **12th** day of **March 2010**.

H.P.G. WAWERU

JUDGE