



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 18 of 2005**

GRAHAM FRANCIS HAMILTON VETCH..... PLAINTIFF

V E R S U S

- 1. GORDON MICHAEL HEWITT SKINNER**
- 2. STEWART DONALD GRENVILLE VETCH**
- 3. KAPLAN & STRATTON, ADVOCATES (A FIRM)..... DEFENDANTS**

R U L I N G

Before me is a Chamber Summons dated 9th January, 2007 filed by M/s Amolo & Company advocates for the plaintiff named as **GRAHAM FRANCIS HAMILTON VETCH**. The defendants are named as **GORDON MICHAEL HEWITT SKINNER** (1st defendant) **SETWART DONAL GREENVILLE VETCH** (2nd defendant), and **KAPLAN AND STRATTON ADVOCATES** (3rd defendant).

The application was filed under Order XXXVI Rules 8 of the Civil Procedure Rules. The orders sought are as follows-

- (a) THAT the Honourable Judge be pleased to direct that the Originating Summons dated 31st October, 2005 do proceed to hearing by way of affidavit evident.**
- (b) THAT the defendant be at liberty to file their Replying Affidavit within fourteen days (14) of directions being filed 9I think it should be given).**
- (c) THAT if necessary, the plaintiff do have leave to file a Further Affidavit to respond to the depositions filed by the Defendants.**
- (d) THAT costs be in the cause.**

This application is opposed.

At the hearing Mr. Amolo for the Plaintiff addressed me. Mr. Makanda for the 1st and 3rd defendants addressed me.

Mr. Amolo informed me that the 2nd defendant had removed himself as a party in these proceedings. Counsel contended that this was merely an application for directions. Counsel contended that it was only after these proceedings were filed, that the 1st and 3rd defendants filed a conveyance as demanded by his client. Counsel contended that it was only after these proceedings were filed, that the 1st and 3rd defendants filed a conveyance as demanded by his client. Counsel submitted that on 9th July, 2009 Justice Onyancha declined to strike out the originating summons.

Mr. Makanda for the respondent opposed the application. Counsel submitted that the 3rd respondent was merely performing a statutory function. Counsel submitted that the originating summons speculative and had been overtaken by events. The issue of costs did not arise as the application was premature. Counsel contended that this matter should be considered as settled.

I have considered the application, the documents filed and submissions of counsel for the parties. In my view, the arguments put by counsel for the 1st and 3rd defendants go to the merits of the application. They are premature. If there is a settlement all the parties have to agree on the settlement if one or the other of the parties does not agree that there is a settlement, then the court has an obligation to hear the parties and make a decision. Therefore, in the present case the Originating Summons cannot be said to have been settled. I also cannot dismiss it on a procedural application as the one before me. I will therefore allow the application dated 9th January, 2007 to facilitate progress of the matter and ensure that the matter does not continue pending in court for an indefinite period.

Consequently, I allow the application and grant all the prayers sought, that is (a), (b), (c) and (d).

Dated and delivered at Nairobi this 11th day of March, 2010.

George Dulu
Judge.