



REPUBLIC OF KENYA

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

Civil Case 484 of 2008

CATHERINE KENAI & 25 OTHERS PLAINTIFF

VERSUS

NATIONAL BANK OF KENYA LTD & 8 OTHERS DEFENDANT

RULING

In the chamber summons dated 8/10/09 invoking the powers donated by Order 6 Rule 13 (1) Civil Procedure Rules the defendants had one main prayer:-

1) That the plaint herein dated 5/11/08 with the verifying affidavits be struck out.

The grounds relied on stated that this suit was commenced by a plaint drawn, signed and filed by M/s Koceyo & Amadi Advocates. As incorporated and constituted, that firm of lawyers was an illegal entity contrary to sections 37, 39 of Advocates Act, hereinafter, the Act. And that when Mr. Amadi appeared before court on 23.9.09 he was unqualified to do so and therefore incompetent to conduct proceedings on behalf of the plaintiffs. In turn Mr Koceyo's maintaining a partnership with Mr Amadi also went against the law. There were other grounds in that the suit had been brought on behalf of the plaintiffs without their written approvals and the verifying affidavits appended were invalid. But it was mainly on the part of the lawyers – Mr Koceyo and Mr Amadi that arguments herein centered, impeaching their capacity and competency to bring this suit as a law firm. A supporting affidavit sworn by the 3rd defendant Leonard Gethai Kamweti accompanied the summons together with a supplementary affidavit the same defendant swore on 5/2/10. Mr Ojiambo argued in support of the application while Mr Wanyanga was heard in opposition. The replying and further affidavits were sworn by one Jack Leonard Gwallah on 22.1.10 and on 11.2.10 respectively. Arguments were basically on law and factual events constituting landmarks in the whole thing. Each side submitted and at the hearing they only highlighted them, with reference to their authorities.

The court heard that when this suit was brought by M/s Koceyo & Amadi Advocates, Mr Amadi had not served for 24 months as an associate in accordance with Section 32 of the Act in order to qualify as a practitioner. Mr Koceyo should not have accepted Mr Amadi as such yet the two had teamed up transacted business of a firm of lawyers and shared profits. The attached returns from the Law Society of Kenya for the years 2008 and 2009 together with the accountant's certificate filed for the year January to December 2008, depicted and described Mr Koceyo and Mr Amadi as partners in the firm already referred to.

Turning to the replying and further affidavit in opposition to this summons, Mr Ojiambo pointed out that Mr Koceyo and Mr Amadi formed their firm on 13.7.06 as per certificate No. 446442. The deponent (Gwallah) however had deponed that that firm ceased to operate under the style and name of M/s Koceyo & Amadi Advocate on 15.2.08. And on 6.3.08 another or new firm

under the same name M/s Koceyo & Amadi was formed with one partner only - Mr Koceyo. Mr Ojiambo saw this as an anomaly that could not be countenanced at all because even as Koceyo & Amadi Advocates was said to have ceased operations, another Koceyo and Amadi was formed. And with one partner only! But then records from the Law Society of Kenya showed that indeed in the whole of 2008 the 2 gentlemen had continued to describe themselves as partners and even when on 29.1.10 Mr Koceyo applied for the practising certificate he had declared on oath that he was a partner in the firm of Koceyo & Amadi Advocates since 13.7.06 with the certificate number 446442. Mr Amadi had done the same on oath. All these documents were laid before the court which was urged to find that Mr Koceyo and Mr Amadi belonged to that said firm from 13.7.06 even as at 17.12.08 covering the time this suit was filed on 5.11.08. The 2 gentlemen had once pretended that they had ceased to operate as partners, yet the papers lodged with the Law Society of Kenya, some on oath, showed otherwise. Accordingly Mr Ojiambo saw Mr. Gwallah's affidavits as untrue in the circumstances.

Due reference was made to the learned decision of the Hon Justice Onyancha delivered on 30.09.09 in several consolidated miscellaneous applications. Proceedings went on in MISC APPLICATION No 901/07 Mohammed Ashraf Sadique & Anr Vs Mathew Oseko T/A Oseko & Co. Advocates where the judge went into all the sections of the Act - Sections 31 (1) (c), 32, 33, 34 (3), 37 and 39. They were all put forth in Mr Ojiambo's presentation. In the Mohammed Sadique case, the same 2 lawyers – Mr Koceyo and Mr Amadi feature as having contravened those provisions of law. Judge Onyancha found them to have done so.

The court was then told that there was no appeal against the Onyancha ruling or even a stay of the same. Then the provisions of Section 16 Registration of Business Names Act were brought into play to show that Mr Koceyo could not trade in the name of Koceyo & Amadi Advocates by himself alone and without Mr Amadi as a partner. Even Rule 12 of the Advocates Practice Rules did not allow that.

Mr Wanyanga's brief reply was that the firm of Koceyo & Amadi Advocates had gone to the Court of Appeal in CIV APPLICATION NO. NAI 300/09 and obtained a ruling but that was not a stay order at all. That were other similar cases pending and in Succ Case No. 329/08, Rawal J had declined to grant orders as those now sought here.

In this court's view, it is not in dispute that Mr Amadi was not duly qualified to practise as an advocate in the firm of Koceyo & Amadi Advocates. There being no such dispute not much exposition needs hold us up here. That firm filed the suit herein 5.11.08. At some point earlier on 15.2.08 to be precise, the firm "ceased" to practise. But on 6.3.08 it was back in business under the same firm, style and name, Koceyo & Amadi but strangely with only one partner.

Under the Registration of Business Names Act (Cap 499) a firm is defined thus:

“firm” means an unincorporated body of two or more individuals, or of one or more individuals and one or more corporations, or of two or more corporations, who or which have entered into partnership with one another with a view to carrying on business for profit.”

The same law defines individual as a natural person and does not include a corporation. It is therefore the firm of Koceyo & Amadi Advocates means that it could only have two or more natural persons. It was therefore not possible in law to have Mr Koceyo alone trading as a firm of Koceyo and Amadi. Such a firm could not be formed and none was formed.

And the Advocates Act Rule 12, Advocates (Practice) Rules could not permit formation/registration of this firm with only one partner at all:

“12. No. advocate shall practise under any name other than his own name or the name of a past or present member or members of the firm.”

So all seen together, Mr. Amadi was not qualified to be a partner in the firm of Koceyo & Amadi Advocate. When Mr Koceyo allowed him to join with that disability, it was contrary to the law and whatever they did together was a nullity. Mr Koceyo was consorting with a layman to purport to do things that only qualified lawyers could do. Thus what they did pertaining to legal practice was a nullity. This court is further satisfied that in law Mr. Koceyo could not form a practice alone in the firm name of Koceyo and Amadi. And in any event the two continued to present documents, some on oath, to the Law Society of Kenya that they were partners in the firm of Koceyo and Amadi since 2006. This was as late as 2008 and 2009.

Accordingly, it cannot be maintained here that this suit was filed by a competent firm of lawyers. It is only fit and proper that it be and is hereby struck out in its entirety with costs to the defendant/applicants.

Orders accordingly.

Delivered on 8/3/10

J. MWERA

JUDGE