

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Case 89 of 2006

JAPHETH OGENDO OWUOR.....PLAINTIFF

VERSUS

ORIENTAL COMMERCIAL BANK LIMITED

WALTTS ENTERPRISES.....DEFENDANT

R U L I N G

I. Background

1. The Plaintiffs/ Respondents herein filed this court suit against the defendant No. 1 a bank and an auctioneer defendant No. 2. That this court issues an injunction to stop the sale of land property belonging to him.
2. It seems there may have been other court cases before court HCC 455/98 being one of them. It also seems that this matter may resolve the issue of statutory sale probably exercised by Defendant No. 1.
3. The suit was filed on 27 July 2007. The last time any action was taken on this file was 24 November 2006 when a certificate of urgency was filed by the then plaintiffs advocate or C.F. Otieno.
4. The said defendants advocate then filed application dated 1st September 2009 or 29 August 2009 and filed on 9 October 2009.

II. Application for dismissal of Suit

5. This application as stated is one whereby the said advocate for the defendant personally deponed to the affidavit dated 1st September 2009 whilst the Chamber Summons of 29th August 2009.
6. The new advocate for the respondent filed no reply to the said application.

III. Opinion

7. Under the Advocate Act cap 16 Laws of Kenya provides that an advocate is not to deponed to an affidavit on behalf of his client. In this case the said advocate stated in an affidavit he deponed to that he is seized with the conduct of this matter for and on behalf of the defendant herein' and "duly competent and authorized to make this affidavit."
8. The affidavit having been so deponed to by an advocate and not his client; the application is hereby struck out.
9. There will be no orders as to costs.

Dated this 29th day of April 2010 at Eldoret
M. A. ANG'AWA

JUDGE

Advocate

N. Mbugua Advocate instructed by the Firm of M/s Ngigi Mbugua & Company Advocate
for the Plaintiff

R. Mwetich Advocate instructed by the Firm of M/s R. Mwetich for the 1st Defendant

29th April, 2010

Court as before

Order that parties to bring up a list of all pending suits.

M. A. ANG'AWA

JUDGE

29/04/2010

“By consent formal mention on 26 April 2010 to confirm if a list of all pending and finalized files and application have been brought up. Order 10 and 11 a Civil Procedure Rule”

A. Ngigi Signed

Ngigi Mbugua & Company Advocates for the Plaintiff

R. Mwetich Signed

Manani Lilan & Company Advocates for the Defendant

Application granted and orders accordingly.

M. A. ANG'AWA

JUDGE

29/04/2010

Position of file:

1. How many exiting files/cases and application

2. for 26/4/2010

M. A. ANG'AWA

JUDGE

29/04/2010