

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

Civil Case 30 of 2004

SETH WANGIRA LUVUTSE PLAINTIFF

VERSUS

ZIPPORAH KITTONY
AGINA MERESO
FLORENCE MAINGI (Being respectively Chairlady,
Secretary and Treasurer of MAENDELEO YA
WANAWAKE ORGANISATION) DEFENDANTS

RULING

The plaintiff herein re-amended her plaint but did not include the rule and order allowing the said amendment. The defendants therefore filed a Notice of Preliminary Objection seeking to strike out the said re-amended plaint.

The reason advanced in the submission filed on behalf of the defendant is that, on 23rd November, 2007, the plaintiff further amended the plaint and filed the re-amended plaint on 16th April, 2008. Neither the court order nor the rule pursuant to which the further amendments were effected was indicated. Order 6A rule 7(1) provides as follows:

“Every pleading and other document amended under this order shall be endorsed with the date of the amendment and either the date of the order allowing the amendment or if no order has been made the number of the rule in pursuance of which the amendment is made.”

It is the submission of the defendant that this rule is mandatory. On the other hand, the plaintiff submits that the said rule is merely directory.

A Preliminary Objection consists of a point of law which has been pleaded or which arises by clear implication out of pleading and which if argued as a preliminary point may dispose of the suit. See **Mukisa Biscuit Manufacturing Co. Ltd. vs. Westend Distributors Ltd. [1969] EA 696 at page 700.**

However best argued, the preliminary point raised herein cannot dispose of this suit. I say so, because, with respect I agree that, the rule herein is not mandatory and in that regard, cite the decision of Bosire J (as he then was) in the case of **Italian Engineering Works vs. Glory Car Hire Ltd. [1990] KLR 219.** Additionally I see no prejudice that has been or will be occasioned to the defendant if the said rule is not cited by the plaintiff.

I am also aware of Section 1A of the Civil Procedure Act as introduced by Act No.6 of 2009 which states as follows:

“The overriding objective of this Act and the rules made hereunder is to facilitate the just, expeditious, proportionate and affordable resolution of the civil disputes governed by the Act.”

With respect therefore, the application of the said provision completely shuts the objection raised by the defendant. The

Preliminary Objection is therefore dismissed with costs to the plaintiff.

Orders accordingly.

Dated, signed and delivered at Nairobi this 22nd day of April, 2010.

A. MBOGHOLI MSAGHA
JUDGE