



Before me is the Chamber Summons dated 9<sup>th</sup> June 2010 which was filed in court on 10<sup>th</sup> June 2010, seeking that these entire proceedings be struck out on the grounds

***“One of the Applicants one HASSAN MOHAMED NASSER Applicant No. 13 did not sign against his name in the letter of authority annexed to the affidavit verifying the statutory statement in the Application for leave to commence Judicial Review proceedings”***

The Applicants allege that this is a fundamental breach of procedure which nullifies the entire suit. The Chamber Summons is supported by the affidavit of **MOHAMED HATIMY**, the 1<sup>st</sup> Applicant

The application is opposed through the ‘Statement Grounds of Opposition’ dated 24<sup>th</sup> June 2010. The Respondents refer to the present application as ***“misconceived and non-meritous”***.

It was agreed that the application be argued by way of written submissions. Both parties duly filed their written submissions and judgement was reserved for 27<sup>th</sup> September 2010.

I have carefully considered the written submissions filed by both counsel. I have also looked at the **letter of Authority** referred to and which is marked as **‘SSK-1’**. I note that indeed the 13<sup>th</sup> Applicant one **HASSAN MOHAMED NASSER** did not endorse his signature thereon implying therefore that he had not granted the necessary authority to the Applicant Salim Said Koi to file pleadings on his behalf. Does this failure/omission by one Applicant out of a total of nineteen (19) Applicants to sign the letter of authority render the entire proceedings fatally defective? I think not. Counsel for Applicant in his submissions cited the case of **SWALLEH S. SWALEH IMU & 4 OTHERS –VS- COUNTY COUNCIL OF LAMU & ANOTHER HIGH COURT PETITION NO. 2 OF 2009 (MOMBASA)** in support of their contention that the entire suit be struck out. In the **SWALLEH** case, the Hon. Justice Mohamed Ibrahim cited the case of **RESEARCH INTERNATIONAL EAST AFRICA –VS- JULIUS ARISI & 213 OTHERS C.A.NO. 321 OF 2003** where the Court of Appeal held as follows

***“In our view, none of the 214 plaintiffs has any right to take any steps in the suit on behalf of any other plaintiff without express authority in writing.***

This is the law and indeed this is as it should be. Just as in the case of legal counsel no party to any suit can purport to act for and on behalf of any other party to the same suit unless he has express written authority to do so. In this present suit 18 out of 19 Applicants have given express authority in writing. It is only one Applicant who has not given that written authority. I do not think the entire suit should be struck out on account of the failure by just one Applicant to sign the letter of Authority. This would in my view be prejudicial to the other 18 Applicants who did sign the letter of Authority and who have authorized the 1<sup>st</sup> Applicant to act on their behalf. In his written submissions **MR. KHATIB**, learned counsel for the Respondents, stated that the said 13<sup>th</sup> Applicant **Mr. Hassan Mohamed Nasser** has sworn an affidavit denying that he was one of the Applicants in the application for Judicial Review for Orders of Certiorari. The said affidavit is not annexed to the Chamber Summons. This then remains a mere allegation with no proof whatsoever.

Mr. Kenga, learned counsel for the Respondents in his written submissions made reference to the case of **RESEARCH INTERNATIONAL EAST AFRICA LIMITED –VS- ARISI AND OTHERS E.A.L.R.[2007] 1318** where the Court of Appeal cited the case of **GRACE NDEGWA AND OTHERS –VS- HON. ATTORNEY GENERAL CIVIL APP. NO. 228 OF 2002** in which it was held

***“There was however a document signed by most of the plaintiffs in that case authorizing Grace Ndegwa and seven other persons to deal with the advocates for the plaintiff. This court found that document to be sufficient authority to Grace Ndegwa by the persons who had signed it”***

In other words the Court of Appeal upheld the validity of the suit in respect of the parties who **had** signed the authority. I am bound to do the same in the present case. There are 18 applicants who have given authority to the Applicant in this case. Failure by one to give such authority cannot be said to lessen or negate the authority given by the other 18. There is no basis on which to strike out the plaint as it remains valid and proper for those 18 Applicants. As such I decline to grant the orders sought in this chamber summons.

In the Research International case, it was held

***“The superior court therefore had the discretion to strike out the suit or make other appropriate orders to allow the plaintiffs to comply with the rules”***

In this case I find that the majority of the Applicants have complied with laid down procedure. I hereby order that the name of the 13<sup>th</sup> Applicant who did not sign the letter of authority be struck out of these proceedings. Costs in the cause.

**Dated and Delivered in Mombasa this 27<sup>th</sup> day of September 2010.**

**M. ODERO**

**JUDGE**

Read in open court in the presence of:-

Mr. Ojode holding brief for Mr. Khatib

Ms. Mbogo holding brief for Mr. Kenga

**M. ODERO**

**JUDGE**

**27/09/2010**