



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**  
**Civil Case 58 of 2009**

**SYOMBUA M. MUTUVA ALIAS**

**GLADYS S. KILONZO**

**ALIAS SALOME SYOMBUA MULE.....PLAINTIFF**

**VERSUS**

**CHARLES A.K. MULELA ALIAS**

**CHARLES ANDREW KILONZO MULELA.....DEFENDANT**

**RULING ON A PRELIMINARY OBJECTION**

1. The issue raised by Mr. Mungata advocate for the Defendants is principally this; since the Plaint herein is unsigned, then the same should be struck off as there is no competent suit before court. No particular law or authority was cited but having heard him and Mrs Mwangangi for the Plaintiff, and having read the authorities cited by Mrs Mwangangi, I will dispose of the issue by stating as follows:-

2. Firstly, I have seen the Plaint in this matter and indeed it is only dated 11.3.2009 but is unsigned by any competent person in the firm of M/s Mwangangi & Co. Advocates. I am aware that Order VI Rule 14 provides as follows:-

***“Every pleading shall be signed by an advocate, or recognized agent (as defined by Order III, rule 2), or by the party if he sues or defends in person.”***

3. In interpreting that provision, Mullah on the Code of Civil Procedure, 12<sup>th</sup> edition at page 502 state as follows:-

***“The signing of plaints is merely a matter of procedure. If a plaint is not signed by the Plaintiff or by a person duly authorized by him in that behalf, and the defect is discovered at any time before judgment, the Court may allow the Plaintiff to amend the plaint by signing the same. If the defect is not discovered until the case comes on for hearing before an appellate Court, the appellate Court may order the amendment to be made in that Court. The appellate Court ought not to dismiss the suit or interfere with the decree of the lower Court merely because the plaint has not been signed. The omission to sign or verify a plaint is not such a defect as could affect the merits of a case or the jurisdiction of the Court.”***

4. I take the view as did Mbaluto,J. in Investment and Mortgages Bank Ltd vs Nakumatt Investments Ltd & 2 others HCCC 782/2000 (Milimani) that the law in Kenya should not be different on the point and I will on that authority alone overrule the objection.

5. However, I also note that the Defendant, upon being served with the Plaint (that was apparently signed) entered appearance and filed a Statement of Defence, and the defect in the court copy could be properly cured by allowing the Plaintiff’s advocate who is still on record, to sign the Plaint and the matter ends there (**see** also Fick and Fick Ltd is

Assimakis (1958) 3 All E.R 182).

6. I should also state here, that I agree with the decision in Trust Bank Ltd vs Amalo Company Ltd [2002] KLR 627 that all disputes should be settled on their merit and ***“that errors should not necessarily defer a litigant from the pursuits of his right.”*** Failure to sign a Plaint is an error curable by allowing the errant party less than a minute to sign it and I again reiterate that the Statement in Mullah is progressive. The suit before me is between an alleged husband and wife who are now estranged and are also in a struggle over certain properties in dispute. The larger interests of justice would be served by hearing the merits of their opposing claims.

A peripheral issue raised by Mr. Mung’ata was that the issues in dispute in this suit are also in dispute in CMCC No. 1300/2008. My simple answer to that issue is that although the existence of that suit has been disclosed at paragraph 20 of the Plaint under attack, the point cannot be a pure point of law determinable by way of a preliminary objection because the pleadings in that suit are not before me and it is nigh impossible to see what issue of law arise without argument on the facts (**see Mukisa Biscuits [1969] E.A. 696**).

7. On the whole therefore, the objection is incompetent, in my view, and is best overruled with costs to the Plaintiff. In the event, let the Plaintiff’s advocate, now append her signature to the Plaint on record and the matter to proceed with speed to its conclusion on the merit

8. Orders accordingly.

Dated at Machakos this 20<sup>th</sup> day of **May 2009**.

**Isaac Lenaola**

**Judge**

In the presence of; Mrs Mwangangi for Applicant

Mr. Mungata for Respondent

**Isaac Lenaola**

**Judge**