

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

Civil Case 319 of 2008

AHMED NOORANIPLAINTIFF

V E R S U S

JOYCE AKINYI OCHIENGDEFENDANT

R U L I N G

On 15th December, 2008 the Plaintiff's learned counsel sought leave to cross-examine one Onesmus Githinji, Esq. upon his affidavit sworn on 11th December, 2008. That affidavit was sworn in response to certain issues raised in the Plaintiff's supplementary affidavit sworn and filed on 2nd December, 2008, particularly in paragraphs 5 and 6 thereof. In his said affidavit, Mr Githinji deponed, *inter alia*, that no sale agreement between the parties herein was ever executed, and further that the Plaintiff was not his (Mr. Githinji) client in the sale transaction pleaded in this suit.

The Defendant's learned counsel did not have any objection to the cross-examination of Mr. Githinji, and on 29th April, 2009 he produced him before court for such cross-examination. But when the Plaintiff's learned counsel enumerated the specific issues upon which he wished to cross-examine, the Defendant's learned counsel was alarmed that Mr. Githinji might be cross-examined upon matters that ought properly to await trial of the action.

Obviously, Mr. Githinji should not be cross-examined upon issues, or to such depth or extent, as would belong to trial of the action. But the extent to which Mr. Githinji should be cross-examined at this interlocutory stage should be left to the Judge seized of the application by chamber summons dated 24th July, 2008. Such cross-examination will be in the course of hearing the said application.

I therefore cannot at this stage give directions as to the specific issues upon which Mr. Githinji may be cross-examined, or the extent of such cross-examination. Let that be handled by the Judge hearing the application, and at the time of such cross-examination. Those will be the directions of the court. Costs of these directions shall be in the cause.

DATED AT NAIROBI THIS 7TH DAY OF MAY, 2009

H. P. G. WAWERU

J U D G E

DELIVERED THIS 8TH DAY OF MAY, 2009