

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 39 of 2008

MUGWIMI KABUTHI & 8 OTHERS.....

.....PLAINTIFF

VERSUS

STEPHEN MURITHI MUGWIMI.....1ST DEFENDANT

JAMES KARIUKI MUGWIMI.....2ND DEFENDANT

RULING

The application dated 10/12/2008 is seeking orders that the plaintiffs further amended plaint amended on 14th November 2008 be struck out with costs. The same is premised on the 2 grounds on its face and supported by counsel for the 2nd defendants and on applicants affidavit dated 10/12/2008. The gist of the said grounds and the supporting affidavit is that the said further amended plaint offends the mandatory provisions of Order VI A Rules 7 (2) and (3) of the Civil Procedure Rules. The application is not opposed by Mr. Mutahi for the 1st defendant. Mr. Kariithi for the plaintiffs said he would rely on the grounds of opposition. Upon perusal of the court file however, I have not seen any grounds of opposition filed in respect of the said application. The application is therefore not opposed. That notwithstanding however, I have perused the pleading in question and I confirm that the same does offend the said provisions of the Civil Procedure Rules. Order VI A Rule 7 (2) requires all amendments to be shown by striking out in red all deleted words- and by underlining in red all added words. Rule 7 (3) requires colours other than red to be used for further amendments to the same document. What Mr. Kariithi has done however is to just underline the added words but he has completely left out what he had struck out earlier. That should not have happened. I do not want to tutor Mr. Kariithi on how he should have amended his defence. I am sure he can read the relevant provisions and comply. What we have now on record is a document that appears to have no relationship whatsoever with the amended plaint dated 5/8/2008. Given that the amended documents supercedes and completely replaces the previous pleading, Mr. Kariithi has with his further amended plaint created for himself a serious complication which spells a death knell for his case unless the further amended plaint is struck out. It is actually in the interests of his clients that the same be struck out so that he can file a complaint one if allowed to do so by the court. For these reasons, my finding is that the further amended plaint is fatally defective. I allow the application dated 10/12/2008 and strike it out with costs to the two defendants herein.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 30th day of June 2009

In presence of:-Mr. Kariithi for Applicnat and Maina Kagio for Ithiga for 1st defendant