

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL CASE 634 OF 2007

JOHN KAMAU NJUGUNA 1ST PLAINTIFF
MARGARET WANJIRU CHEGE 2ND PLAINTIFF
MERCY NYAMBURA KANYARA 3RD PLAINTIFF
MARY NJERI MBURU 4TH PLAINTIFF
NDUNYU WA MWANGI 5TH PLAINTIFF

VERSUS

EMILIO MWANGI *t/a* CIRCUIT INVESTMENT.....1ST DEFENDANT
MUTUMA D. KIBANGA ADVOCATE 2ND DEFENDANT

RULING

Application dated 12/5/09. The application, Chamber Summons is brought under **Order VI Rule 13 (1) (a), (b), (c) and (d)** by 2nd defendant seeking orders to strike out the plaint against 2nd defendant or strike out the 5 plaintiffs' claim against the 2nd defendant on grounds that the 1st, 2nd, 4th and 5th have not verified the plaint by affidavits, the defendant is wrongly enjoined in this suit. The investment contract is between plaintiffs and first defendant.

The supporting affidavit by the 2nd defendant shows that the 2nd defendant is an advocate and the 1st defendant is a client. The applicant has not seen the alleged contract and he is not a party. He is not liable to the plaintiffs under such a contract and in that case he cannot release funds (if any) held in trust for clients.

I have read the grounds of opposition. The grounds are not supported by evidence. The fact that advocate is engaged by a client he cannot be liable personally by activities of his clients. He takes instructions from the client. He is bound by the privilege provisions under the **Evidence Act** not to disclose the communications between him and his client. He cannot be compelled to disclose the same.

I have perused the authorities cited by the applicant. I have also perused the plaint and the application. I am satisfied that the plaintiffs have no cause of action against the second defendant.

The application is allowed with costs to the applicant.

It is so ordered.

DATED, SIGNED and DELIVERED at Nairobi this 17th day of July, 2009.

JOYCE N. KHAMINWA

JUDGE