



SAFARI SEEKERS (KENYA) LIMITED.....PLAINTIFF

V E R S U S

MODWAYS INVESTMENTS LIMITEDDEFENDANT

R U L I N G

The application now before the court (chamber summons dated 4th June, 2009) seeks the following orders:-

- “1. That the plaint herein dated 20th January 2009 be struck out and the Plaintiff’s suit as against the Defendant be dismissed with costs on an indemnity (advocate/client) basis.**
- 2. That the costs of and occasioned by this application be borne by the Plaintiff on a full indemnity (advocate/client) basis.”**

The application is brought essentially upon the ground that the advocate who filed the suit, one **COLLINS ODHIAMBO ARIO**, did not have a valid practicing certificate for the year 2009 when he filed the suit. As such, the plaint and all other proceedings filed by the said advocate are incompetent, having been signed and filed by an unqualified person who was not entitled to appear and conduct any matter before the court as an advocate.

The application is brought under **Order VI, rule 13 (1) (b), (c) and (d)** of the **Civil Procedure Rules** (the **Rules**). It is thus the Defendant’s case in this application that the plaint is scandalous, frivolous or vexatious; that it may prejudice, embarrass or delay the fair trial of the action; and that it is otherwise an abuse of the process of the court.

The application is supported by the affidavit of one **EDNA FERNANDES**, the retail portfolio manager of a firm called **KNIGHT FRANK**, the estate agents of the Defendant. To the affidavit is annexed a letter dated 25th May, 2009 written to the Defendant’s advocates by one **ADDRAYA E. DENA**, the Programme Director, Compliance and Ethics, of the Law Society of Kenya. The letter confirms that:-

“Mr. Collins Odhiambo Ario, Advocate, has not taken out a current practising certificate.”

The application was duly served on 4th June, 2009 upon the firm of Ario & Company, Advocates, the Plaintiff’s advocates on record. This is disclosed by the affidavit of service filed on 9th June, 2009. The copy of the application annexed to the affidavit of service has clearly endorsed on it the hearing date for the application, 8th October, 2009.

There was no appearance for the Plaintiff on the said date at the hearing of the application. There were also no papers filed in response to the application. This being the case, the application is unopposed.

Apart from that, **section 9** of the **Advocates Act, Cap 16** provides as follows:-

“Subject to this Act, no person shall be qualified to act as an advocate unless:-

- (a) he has been admitted as an advocate; and**
- (b) his name is for the time being on the Roll; and**
- (c) he has in force a practising certificate;**

and for the purpose of this Act a practising certificate shall be deemed not to be in force at any time while he is suspended by virtue of section 27 or by an order under section 60(4)”.

The Registrar of the High Court issues practising certificates to advocates upon the recommendation of the Law Society of Kenya. The said Society has stated categorically that at the time the plaint in this suit was filed the advocate who prepared and signed the plaint, **COLLINS ODHIAMBO ARIO**, did not have a current practising certificate. As such, he was not entitled or authorized to act as an advocate and file the suit on behalf of the Plaintiff.

Mr. Collins Odhiambo Ario, despite service of the application, has not contradicted the position taken by the Law Society of Kenya. He has not bothered to file any papers in response to the application.

Upon the authority of the Court of Appeal in the case of **OBURA –Vs- KOOME, East Africa Law Reports [2001] IEA 173 (CAK)**, the plaint and other proceedings filed herein by Mr. Collins Odhiambo Ario, are incompetent. I will grant the application by chamber summons dated 4th June, 2009 as prayed. I therefore order that the plaint and other proceedings filed herein by Mr. Collins Odhiambo be and are hereby struck out. It is so ordered.

DATED AT NAIROBI THIS 28TH DAY OF OCTOBER, 2009

H. P. G. WAWERU

J U D G E

DELIVERED THIS 30TH DAY OF OCTOBER, 2009