



**OWINO –UHURU COMMUNITY DEVELOPMENT GROUP .....PLAINTIFF**

**VERSUS**

**FAROUK AKBERALLALJI MANGALJI .....1<sup>ST</sup> DEFENDANT**

**THE ADMINISTRATORS OF THE ESTATE OF**

**THE DECEASED ELIZABETH MUTHINI .....2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR .....3<sup>RD</sup> DEFENDANT**

## **R U L I N G**

The plaintiffs who refer to themselves as a community group based in Mikindani area filed this suit on a date this court cannot tell from the record. The plaint is not stamped neither did I see any receipt for payment of filing fees.

The Deputy Registrar is to make an inquiry into those issues in due course and if necessary take any appropriate action.

In the meantime, the plaintiff – Owino- Uhuru Community Development says it is registered as No. 3070 – 3520304 in the Department of Gender and Social development, Mombasa.

After filing the suit, it took out a chamber summons dated 14th August 2009 but yet again unstamped. This time filing fees were duly paid. In the application the plaintiff inter alia seek temporary injunctive orders against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in respect of the suit property. Plot No. 148/MN/V Mikindani Mombasa.

The second Defendant upon service filed a Notice of Preliminary objection on the grounds that:-

1. The suit is an abuse of the court process because it is brought by an unauthorized agent or person and therefore offends order III of the Civil Procedure Rule.
2. The suit is an abuse of the court process since it offends the provisions of Order 1 Civil Procedure Rules.

I perused the plaint and found that the plaint is signed by one

Cornel L. Shisanya for and on behalf of the plaintiff group. The plaint is said to be drawn by Owino – Uhuru Community Development Group. Annexed to the plaint is a “notice of filing authority” dated 14.8.09 in which the officials of the plaintiff group authorize the said Cornel L. Shisanya to file court proceedings, and to defend any actions arising from any such actions, for on behalf of the plaintiff. The said Cornel L. Shisanya is the one who made the verifying Affidavit in support of the plaint.

I have carefully perused the pleadings and accompanying affidavits and annexure. First and foremost,

the said Cornel L. Shisanya is not an advocate of the High Court: There is no dispute in this issue. The said gentleman in response said that he is a recognized agent on basis of the Notice of Authority referred to above. That he is a recognized agent having been duly authorized to file the suit by the officials of the plaintiff. A recognized agent is described in order III of the Civil Procedure Rules as follows:-

“2 The recognized agents of parties by whom some appearances, applications and acts may be made are:

(a) Persons holding power of attorney authorizing them to make such appearances and applications and do such acts on behalf of parties.

(b) Persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the court within which limits, the appearance application or act is made or done, in matters connected with such trade or business only, where no other agents is expressly authorized to make and do such appearances, applications and acts.

(c) In respect of a corporation, an officer of the corporation duly authorized under the corporate seal.”

The subject in the case clearly does not fall within the

aforesaid categories. He did not produce any registered power of attorney to be a recognized agent.

I do hold that the said person Cornel L. Shisanya is not a recognized agent of the plaintiff group herein.

The plaintiff is not a body that carries any trade and it is in any event within the jurisdiction of the court.

In fact while it is not yet an issue, the legal status of the plaintiff is not clear or known to this court. It is certainly not a limited liability company, partnership, under the Partnership Act, or an business under the Registration of Business Names Act and a Society under the Societies Act? What is the legal status of the plaintiff? It is doubtful that it has the capacity to sue and be sued in its purported name. It is noted that the suit is not even a representative suit an issue raised up as the second point of objection. This can only be dealt with after exhausting the first ground.

In view of the foregoing. I do hold that the plaint herein has in fact be drawn and filed by Cornel L. Shisanya. He is not a recognized agent under order 3 of the Civil Procedure Act. He is also not an advocate of the High Court of Kenya. He is an unqualified person who is expressly prohibited from preparing documents or instruments including pleadings in relation to any legal proceedings.

The said person is in breach of Section 34 of the Advocates Act.

The plaint herein and all the subsequent pleadings filed are incompetent and defective. They are all nullities. I do hereby strike out the plaint on the said ground. The costs of the suit shall be borne and paid by the said Cornel L. Shisanya personally. This is not an appropriate matter for taxation for obvious reasons and the costs shall constitute the penalty as his conduct is also an act of contempt of this court. I do hereby order that the said Cornel L. Shisanya shall pay to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants a sum of Kshs.30,000/- within the next 30 days being punitive costs. Pending the said payment, the said Cornel L. Shisanya shall not file any process within the courts in the Coast Province or purport to appear in any court within the said province purporting to act as an recognized agent or in any other purported representative capacity.

The Law Society of Kenya, Coast Branch is directed to investigate the conduct of the said Cornel L. shisanya and if found necessary to institute criminal proceedings against him under the Advocates Act.

Orders accordingly.

**Dated and delivered at Mombasa this 23<sup>rd</sup> day of October 2009.**

**M. K. IBRAHIM**

**J U D G E**

Ruling delivered in open court in the presence of Mr. Kenzi for  
the 2<sup>nd</sup> Respondent and Mr. Shisanya for Applicant.