



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MACHAKOS
Civil Case 167 of 2009

PETER ALWANGA INYANGALA 1ST PLAINTIFF/APPLICANT

JACKSON KAMINDA MUNYAO 2ND PLAINTIFF/APPLICANT

FATUMA JACKSON MUNYAO 3RD PLAINTIFF/APPLICANT

PATRICK MULI MWANIKI 4TH PLAINTIFF/APPLICANT

MUENI MAINGI VUTU 5TH PLAINTIFF/APPLICANT

KENFROS ENTERPRISES LIMITED 6TH PLAINTIFF/APPLICANT

ATHI RIVER MEDICAL SERVICES LTD. 7TH PLAINTIFF/APPLICANT

DORCAS YEGO 8TH PLAINTIFF/APPLICANT

AARON KUTIKHULU 9TH PLAINTIFF/APPLICANT

MARTIN MBAO 10TH PLAINTIFF/APPLICANT

IRUNGU MAINA 11TH PLAINTIFF/APPLICANT

VERSUS

MAVOKO MUNICIPAL COUNCIL DEFENDANT/RESPONDENT

RULING ON A PRELIMINARY OBJECTION

1. The Preliminary Objection before me is straight-forward; that the Defendant is sued in the wrong-name because under Section 12 of the Local Government Act it should have been sued as “Municipal Council of Mavoko”. That therefore the suit should be struck off.
2. The issue, I am aware, has elicited different decisions of the High Court. I refer for example to the decision of Mwera J in a case involving the City Council of Nairobi.
3. In that decision, Mwera J took the view that where the City Council of Nairobi was sued as “Nairobi City Council”, the error was one of law and there being no such party under Section 12 (3) aforesaid, then the suit was rendered incurably defective.

4. In a recent decision involving the Town Council of Wote, I declined to strike out the Council's name because I take the view that in this case the error is curable by amendment.
5. I have seen minutes of the council exhibited on record in this case and it refers to itself as "Mavoko Municipal Council", the allegedly offending name! In letters regarding the suit land, it refers to itself by the same name inspite of Section 12 (3) aforesaid.
6. I take the view that a Preliminary Objection must go to the root of the claim and what is before me is nomenclature and not substance. The objection is overruled but the Plaintiff is at liberty to amend its Plaint.
7. No order as to costs.
8. Orders accordingly.

Dated and delivered at Machakos this 13th day of October 2009.

ISAAC LENAOLA

JUDGE

In presence of: Mr Kamanda h/b for Mr Kahonge for Respondent N/A for Plaintiff

ISAAC LENAOLA

JUDGE