



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**

**Civil Case 13 of 2007**

**GLADYS AGANI SAIGA.....PLAINTIFF**

**V E R S U S**

**THE AGRICULTURAL FINANCE COROPORATION.....1ST DEFENDANT**

**ELIUD SACHIDA .....2ND DEFENDANT**

**R U L I N G**

In his application dated 9<sup>th</sup> June, 2009 the second defendant seeks orders that the plaint herein be struck out and the suit be dismissed with costs to the 2<sup>nd</sup> defendant. The application is brought under **Order VI Rule 13 (b) and (d)** of the Civil Procedure rules and is supported by the applicant's affidavit sworn on 9<sup>th</sup> June, 2009.

Mr. Mbeja, counsel for the applicant submitted that the suit herein is vague, vexatious and frivolous. The plaintiff lacks capacity to bring this suit as she did not obtain a grant of letters of administration before filing the suit. Counsel further argued that the plaintiff was granted leave to amend the plaint and this was not done within 14 days. The original plaint does not have much chance of success. The suit touches an agricultural land and no land /control Board consent was obtained.

Mr. Ondieki, counsel for the plaintiff opposed the application and relied on the plaintiff's replying affidavit sworn on 19<sup>th</sup> October, 2009. Counsel submitted that the Amended plaint was filed, served and a reply thereto was filed by the 2<sup>nd</sup> defendant. The plaintiff is an administrator and evidence will be adduced during the hearing of the case. Whether consent was granted by the Land Control Board will be determined after the matter is heard. Counsel contends that no period was fixed by the court to file the amended plaint.

On 11<sup>th</sup> December, 2008 Justice Fred Ochieng delivered a ruling whereby he allowed the plaintiff to amend her plaint and also dismissed the 2<sup>nd</sup> defendant's application dated 28<sup>th</sup> May, 2007 seeking to strike out the plaint. No time was fixed within which the plaintiff was to file and serve the amended plaint. The plaintiff contends that her counsel used to write to her through the wrong address and this led to communication problem.

The record shows that the Amended plaint was filed on 16<sup>th</sup> June, 2009 and further court fees of KShs.70,075/= was paid on that date. This was six months after the order granting leave to amend was granted. Although no time limit was given by the court, Order VIA rule 6 states as follows:-

***Where the court has made an order giving any party leave to amend, unless the party amends within the period specified or, if no period is specified, within fourteen days, the order shall cease to have effect, without prejudice to the power of the court to extend the period.***

From the above provision it follows that the Amended plaint was filed out of time. The only issue is whether it should be struck out. The reason for the delay is that there was communication breakdown between the plaintiff and her counsel. A letter from the plaintiff's counsel dated 17<sup>th</sup> December, 2008

addressed to the plaintiff notified her of the order allowing the amendment of the plaint. The letter also called for the court fees of KShs.70,000/= to enable the filing of the amended plaint. An earlier letter dated 21<sup>st</sup> October from the plaintiff's counsel notified the plaintiff of the date of the ruling on 11<sup>th</sup> December, 2008 and also called for the court filing fees. These two letters are attached to the supporting affidavit of the plaintiff's Advocates in an application to withdraw from acting for the plaintiff due to lack of instructions. The application was filed on 20<sup>th</sup> April, 2009 and is pending in court.

From the above circumstances I am satisfied that there was communication breakdown between the plaintiff and her advocates. The Amended plaint was filed on 16<sup>th</sup> June, 2009 and court filing fees duly paid. I hereby extend the period for the filing of the amended plaint and the filed amended plaint shall be deemed to have been duly filed within time and the same shall apply to Reply and Defence to the Amended plaint filed on 2<sup>nd</sup> July, 2009.

The next issue is whether the suit is vexatious, vague and frivolous. The applicant contends that the plaintiff lacks locus standi to bring the suit and that no consent was granted by the Land Control Board. The plaintiff is seeking orders of injunction against the 1<sup>st</sup> defendant. She is also seeking 40 acres out of plot KAKAMEGA/SOY/215 or in the alternative payment of KShs.2,240,000/= plus interest. I do find that the plaint discloses a cause of action and the same is not frivolous or vexatious. Issues as to whether the plaintiff lacks locus standi are matters of evidence and the same applies for the issue whether there was consent from the concerned Land Control Board.

In the end, I do find that the application dated 9<sup>th</sup> June, 2009 lacks merit and the same is dismissed. Costs shall follow the outcome of the suit.

***Delivered, Dated and Signed at Kakamega this 26<sup>th</sup> day of November, 2009***

**SAID J. CHITEMBWE**

**J U D G E**