



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

Civil Case 64 of 2007

JACKSON KARANJA KAMAU =====PLAINTIFF

V E R S U S

SOLOMON ALULA KADIMA =====DEFENDANT

R U L I N G

The defendant's application is for the striking out or the dismissal of the suit.

The reason advanced for seeking those orders is that the plaint which commenced the action is unsigned, and therefore it is deemed not to constitute a valid pleading.

Order 6 rule 14 of the Civil Procedure Rules provides as follows;

“Every pleading shall be signed by an advocate, or recognized agent (as defined by Order III, rule 2), or by the party if he sues or defends in person.”

In this case, the plaintiff sued in person. He ought to have signed the plaint, but failed to do so. Accordingly, the plaint is a nullity.

In accordance with the decision of the Court of Appeal in **SHAH Vs INVESTMENTS & MORTGAGES BANK LIMITED [2001] 1 E.A. 275**, an unsigned plaint is liable to being struck out.

The plaintiff has not made any submissions to the contrary, nor did I find any reason not to strike out the plaint herein.

However, the plaintiff insists that there was already an agreement between the parties herein, that the case would be withdrawn, with no order as to costs.

According to the plaintiff, the agreement between the two parties was arrived at, in the offices of Mr. Wanyonyi, advocate for the defendant.

As the defendant appeared to have sworn an affidavit confirming that he had no interest in the land that is the subject matter of the suit, whilst his advocate doubted the authenticity of the said affidavit, the court adjourned the application, so that the defendant could personally be given the opportunity to attend court, to state his position. When adjourning the application, I did express myself thus;

“I am concerned that the defendant and his advocate may be acting in an inconsistent manner, if the affidavits allegedly sworn by the defendant are authentic.

As counsel has submitted that the defendant could not have sworn the affidavit (annexature JKK2). I hold the considered view that instead of basing my verdict on presumptions, the defendant should be summoned to attend court personally.”

Regrettably, the defendant did not attend court, as he was, reportedly, in Tanzania.

In the circumstances, I find no reason to doubt the authenticity of the defendant’s affidavit, which was sworn before Miss Edel Fuchaka, Advocate and Commissioner for Oaths, because the person who cast aspersions thereon, did not give me anything to back his contentions.

In the event, the plaint is struck out, but with no order as to costs of the suit. However, the costs of the application dated 20/8/2007 are awarded to the defendant.

Dated and Delivered at Kitale, this 30th day of January, 2008.

FRED A. OCHIENG

JUDGE