



**KITOLOLO CONSULTANTS LTD.....**

**.....PLAINTIFF**

**VERSUS**

- 1. MARTIN ARTHUR SSUNA**
- 2. JENIFER MUKAMBURU MWACHOFI**
- 3. PETER KAMAU NGANGA (Sued on their own behalf and on behalf of Local Congregation of WORLD HARVEST EVANGELISTIC MINISTRIES INTERNATIONAL (WHEMI))**

**R U L I N G**

This is an Ex parte Chamber Summons expressed to be brought under Order 1 Rules 8 (1) and (2) of the Civil Procedure Rules for orders that the Defendants be authorized to represent themselves and all other members of the Local Congregation of world Harvest Evangelistic Ministries International (WHEMI). The application is supported by an affidavit sworn by Austin Salmon Kitololo in which he avers that he is the Managing Director of the plaintiff company and that he is competent to swear the affidavit in support of the application. In the affidavit the applicant avers that the claim in the intended suit is for payment of Kshs. 670,000/= fees being for work done on the Defendant's church. The plaintiff names three defendants namely Martin Arther Ssuna, Jenifer Mukamburi Mwachofi and Peter Kamau Nganga being sued on their behalf and on behalf of the Local Congregation of WORLD HARVEST EVANGELISTIC MINISTRIES INTERNATIONAL (WHEMI).

The affidavit evidence does not disclose whether or not the said church is a registered organization and if so registered in what capacity the three defendants are being sued. Although the details of the suit are not disclosed the facts as gathered from the affidavit evidence it is clear that this claim arises out of a contract. That being the case, the plaintiff ought to have sued the person who did the negotiation and entered into the contractual obligation and therefore a representative suit is not tenable. Ordinarily a registered organization such as the church operates its business through its officials if the officials had the authority to enter into such a contract.

I may also add that an application for leave to file a representative suit should be accompanied with a draft plaint to assist the court to decide whether or not to grant the leave sought.

For the above stated reasons I decline to grant the plaintiff leave to file a representative suit and dismiss the application with no order as to costs.

Dated and delivered at Nairobi this 27th day of February 2008.

**J. L. A. OSIEMO**

**JUDGE**