

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 76 of 2004

PHINEAS KIMATHIPLAINTIFF

VERSUS

1. JAMES MUIRURI KAHUMBURA

2. JOHN KAMAU.....DEFENDANTS

R U L I N G

The Defendants herein have, by notice dated 28th May 2007, raised a preliminary objection to the Plaintiff's suit upon the following grounds which I have re-phrased as necessary –

1. That the Defendants were at all material times and still are the chairman and treasurer respectively of KENYA MOTOR SPORTS CLUB (which is a society registered under the Societies Act, Cap 108) acting in their capacities as such officials. They thus cannot be sued in their individual and personal capacities; as such the suit is incompetent.
2. That the suit is also incompetent for non-joinder of other officials of KENYA MOTOR SPORTS CLUB and the society itself.

I have considered the submissions of the Defendants' learned counsel. There was no appearance for the Plaintiff despite service upon his advocates of necessary hearing notice. I have also perused the pleadings herein, particularly the plaint. The Plaintiff's claim relates to the actions of the Defendants as officials of KENYA MOTOR SPORTS CLUB, apparently a society without the capacity to sue or be sued in its own name. This is notwithstanding the fact that the Plaintiff in the plaint challenges the Defendants' capacities to be officials of the society without seeking any declaration in that regard.

Further, the premises eviction from which the Plaintiff is resisting are owned by the society.

In these circumstances the Defendants ought to have been sued, not in their personal capacities, but as officials of the society, KENYA MOTOR SPORTS CLUB, for and on behalf of that society. The suit is therefore incompetent. It is hereby struck out with costs to the Defendants. It is so ordered.

DATED AND SIGNED AT NAIROBI THISDAY OF MAY 2008.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 30TH DAY OF MAY 2008