

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 34 of 1999

IJAZ NAJMUDIN GANIJEE.....PLAINTIFF/APP.

VERSUS

COMMISSIONER OF LANDS.....1ST DEFENDANT/RESP.

SALAH-UD-DEEN.....2ND DEFENDANT/RESP.

MUBARAK SALAH-UD-DEEN.....3RD DEFENDANT/RESP.

R U L I N G

On the 12th January, 1999, Ijaz Najmudin Ganijee (hereinafter referred to as the applicant) filed an originating summons under Order XXXVI Rule 3A of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking determination of questions between the applicant and the Commissioner of Lands, Salah-Ud-Deen, Mubarak Salah-Ud-Deen (hereinafter referred to as 1st, 2nd and 3rd respondents). The questions arose from a caveat lodged by the applicant over property known as LR No.2/195 along Kirichwa Road, Nairobi. The originating summons filed by the applicant was neither dated nor signed.

By a notice of motion dated 11th January, 2008 the applicant has now moved this court under Order L Rule 1 Section 3A of the Civil Procedure Act, that leave be granted to the Plaintiff/applicant's advocate to date and sign the originating summons filed on the 12th January, 1999.

The applicant has sworn an affidavit in support of the application in which he deposes that his previous advocates Paurvi Rawal Advocates failed to date or sign the originating summons, and that it is in the interest of justice that he is allowed to sign the originating summons as it is necessary that all pleadings filed in court should be dated and signed. The applicant maintains that the defendant will not suffer any prejudice if the application is allowed.

The application was served on the 2nd and 3rd respondents but not on the 1st respondent as no appearance had been entered for the 1st respondent. The 2nd and 3rd respondent did not file any response to the application, nor did they attend court. I have examined the originating summons which was filed in court on the 12th January, 1999 and it is apparent, that although the same purports to have been drawn by Paurvi Rawal Advocate, the originating summons is neither dated nor signed. To that extent the originating summons is defective. Although the applicant seeks leave of this court to date and sign the originating summons the applicant cannot sign the originating summons on behalf of Paurvi Rawal Advocate. Moreover there has been an inordinate delay in bringing this application. It was pointed out to the applicants on the 4th June, 2004 that there was no signed copy of the originating summons. This application was however not brought until three and a half years later which is exactly 9 years after the originating summons was filed. That delay has not been explained. In the circumstances there is no justification for this court to exercise its discretion in favour of the applicant. For this reason the

application dated 11th January, 2008 is rejected.

Dated, and delivered this 29th day of May, 2008

H.M. OKWENGU

JUDGE