

5. Clearly, the advocates as did their client, knew who was being sued and understood the misdescription in the name of the Defendant but that fact does not change the cause of action against it nor the substratum of the suit as well as the questions in dispute.

6. I therefore agree with *Wendoh, J. James Mwangangi* (supra) when the learned judge stated as follows:-

“The Defendant/Respondent is not properly described but mere misdescription of a party cannot render a suit incompetent. This matter has just been filed and the court has wide discretion under Order 1 Rule 10 of the Civil Procedure Rule to an amendment of the parties on its own or upon an application.”

7. I am aware that the High Court in previous decisions has upheld objections such as the one before me but my humble view is that injustice will certainly be caused to parties when otherwise justified lawsuits are struck out on such a minor technicality.

8. In the end therefore, the objection does not meet the favour of this court and is best overruled with costs. The Defendant is at liberty to seek amendment of the Plaintiff in the usual manner.

9. Orders accordingly.

10. Dated and delivered at Machakos this 26th day of June 2008

Isaac Lenaola

Judge

In the presence of: Miss Kamende for Plaintiff

Mr. W. Kilonzo for Defendant

Isaac Lenaola

Judge