



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**Civil Case 89 of 2007**

**JEREMIAH ONAMI OBWOGGE trading as**

**HIGH TECK COLLEGE OF ACCOUNTANCY .....  
PLAINTIFF**

**VERSUS**

**1. THE CHAIRMAN                    )**

**2. THE BRANCH MANAGER,        )  
..... DEFENDANT**

**AGRICULTURAL SOCIETY OF KENYA (SOUTHERN KENYA  
BRANCH) )**

**RULING**

The defendants filed an application by way of Chamber Summons under **Order I rule 10** and **22**, **Order VI rule 13(1) (b)** and **VIA** of the **Civil Procedure Rules**. They urged the court to strike out the amended plaintiff filed on 14<sup>th</sup> August, 2007. The application was made on the grounds that:

- (a) The original plaintiff is a nullity wherefore no amendment can cure the defect engendered hereby.
- (b) The effect of the amended plaintiff was to substitute the original defendant without leave.
- (c) The defendants as set out in the amended plaintiff had no capacity to be sued.
- (d) There was no tenancy between the parties to warrant the instant suit.
- (e) The suit was scandalous, frivolous, vexatious and abuse of the due process of this court.

The application was supported by an affidavit sworn by one Morris Ndugire, the branch manager of the Agricultural Society of Kenya, Kisii Branch.

Mr. Nyamurongi for the defendants submitted that the second defendant was a branch of a society known as **The Agricultural Society of Kenya**, which was duly registered under the **Societies Act**, Cap 108. Under that Act, it is the officials of the society who could be sued for and on behalf of the society. He cited the case of **SIMU VENDORS ASSOCIATION VS THE TOWN CLERK, CITY COUNCIL OF NAIROBI & ANOTHER**, Misc. Application No.427 of 2005 of Nairobi.

The respondent did not file either grounds of opposition to the said application or a replying affidavit. Mr. Ombachi for the respondent submitted that the plaint was capable of amendment and urged the court not to strike it out. In his view, the defendants' application was seeking to defeat the suit because of misjoinder of parties; contrary to the provisions of **Order I rule 9**.

It is not in dispute that the second defendant herein is not a legal entity capable of being sued in its own name; not even the mother society, The Agricultural Society of Kenya. It is trite law that an unincorporated society registered under the Societies Act can only be sued through its officials. The plaint and the amended plaint are bad in law.

I strike out the plaintiff's suit with costs to the defendants.

**DATED, SIGNED and DELIVERED** at Kisii this 25<sup>th</sup> day of **June**, 2008.

**D. MUSINGA**

JUDGE

Delivered in open court in presence of:

Mr. Ombachi for the plaintiffs.

Mr. Nyamurongi for the defendants.

**D. MUSINGA**

JUDGE