

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
Civil Suit 303 of 1999

ANTHONY MWENGA MAVUAPLAINTIFF

VERSUS

1. COUNTY COUNCIL OF KILIFI

2. GURUDEV SINGH

3. TOWN COUNCIL OF KILIFI.....RESPONDENTS

R U L I N G

Anthony Mwenga Mavua, the plaintiff herein, took out a summons dated 28th day of January 2008 in which he prayed for an order to have one Twalib Abdalla Mbarak joined to this suit as an interested party. The same is supported by the affidavit sworn by Anthony Mwenga Mavua. The supporting affidavit is not attested nor dated.

The defendants opposed the summons by filing the replying affidavit of Twalib Abdalla Mbarak sworn on 25th March 2008. When the summons came up for interpartes hearing, Mr. Odera, learned advocate for the defendants urged this court to strike out the same on the ground that the applicant filed it in person yet he had an advocate on record. It is not denied that the firm of Stephen Macharia Kimani & Co. Advocates was the plaintiff's advocate until 25th March 2008 when the plaintiff filed a notice to act in person in place of Odhiambo and Co. Advocate. By the time he filed the summons dated 28.01.2008, the plaintiff had a recognized agent by the name of Stephen Macharia Kimani & Co. Advocates. The law did not permit the plaintiff to file the summons in person yet he had an advocate on record. On this account alone the summons dated 28th January 2008 is rendered fatally defective. Even if the application was competent, the plaintiff cannot competently take out third party proceedings. That is the preserve of the defendant. On this score the summons is rendered incompetent.

I have already stated that the supporting affidavit was not dated nor attested. The affidavit is rendered fatally defective and incompetent under order XVIII of the Civil Procedure rules and under the provisions of the Oaths and Statutory declarations Act. The same is ordered struck out. This leaves the summons dated 28.1.2008 without any support contrary to the requirements of the Civil Procedure rules.

In the end I am convinced the summons dated 28.1.2008 should be struck out which I hereby order with costs to the defendants.

Dated and delivered at Mombasa this 5th day of June 2008.

J.K. SERGON

J U D G E

In open court in the presence of plaintiff and in the absence of the defendants.