



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 123 of 2008

Land and Environmental Law Division

2. Subject of Main Suit: - Land

L R 25693 Mavoko Municipality 9.0 acres (3.6ha) Breach of sale agreement

- (a) Complaint filed 27.3.08 and dated 26.3.08.
- (b) Certificate of urgency application for injunction filed 27.3.08 and dated 26.3.08
- (c) Kubo J. certify urgency 27.3.06
- (d) Inter party hearing 14.4.08

Held:-

Advocate for plaintiff has no practicing certificate. Whole suit struck out.

3. Civil Practices and Procedure /Advocate

4. Application dated 30.4.08

4.1. Certificate of urgency

4.2. Order 44 r 1, 1(a) 3(2) and (6) to set aside the order of court striking out suit.

5. Application opposed:

The advocate mislead court.

Practicing certificate of 1.4.08 was paid for on 14.4.08 at 11.15 a.m.

No error

That the pleading were prepared on 26.3.08 and filed 27.3.08.

No practicing certificate.

Application be dismissed.

6.Held: Advocate had no practicing certificate at time of filing suit.

7. Case law - Nil

8. Advocate

M. Omwoyo instructed by M. Omwoyo & Co. Advocates for the plaintiff - present

M. Waiganjo of M. Waiganjo & Co. Advocates for the defendant/respondent – present

DR. IAN BWOSIEMO MAGARA.....1ST PLAINTIFF

BRENDA KWAMBOKA MANWAH.....2ND PLAINTIFF

VERSUS

FUTURE ESTATES LIMITED.....DEFENDANT

RULING

I. APPLICATION NOTICE OF MOTION

30 APRIL, 2008

1. The application of Notice of Motion 30 April 2008 seeks this court order to:-

“review, set a side and on lift the orders herein gives on

14 April 200”.

2. That the proceeding of this matter be reinstated and heard again.

II. Background of the case

3. The alleged advocate for the plaintiff filed a suit on land under certificate of urgency on the 27 March 2008. The proceeding were dated the 26 March 2008. It concerned land LR 25693 Mavoko Municipality 9.0 acres (3.6 ha). The dispute there in with the defendant was a breach of sale agreement.

4. The advocate appeared before Kubo J. who certified his application urgent on 27 March 2003 and set an inter – parties date for 14 April 2008.

5. On 14 April 2008, it transpired when the advocate appeared before me,he had no practicing certificate.

6. This court expunged and struck out all the proceeding and pleadings before court on the grounds of there being no practicing certificate.

7. By an application of 30 April 2008 the said advocate seeks for order that I review my order.

8. His explanation was that he applied for his practicing certificate on 28 January 2008. He was received at the law Society Office on 5 January, 2008 and issued with Receipt P008608 on 11February 2008.

9. That his certificate had been dispatched. He produced his practicing certificate dated 1 April 2004. On perusing this certificate, it was paid for on 14 April 2004 at 11.00 am the same day that the advocate appeared to court and after case had been expunged.

10. The advocate now prays I review my orders and reinstate this suit for hearing under Order 44r 1 Civil Procedure Rules.

II. On reply

11. In reply to this application, which was opposed, the advocate for defendant stated that Order XLIV r1 Civil Procedure Rule is not applicable in this situation. There was never any error committed by the court.

12. The advocate misled the court to say he applied for his certificate on 28 January 2008. This is not correct. The practicing certificate was paid for on 14 April 2008 at 11.00am.

13. Nevertheless even if he had a practicing certificate as of 14 April 2008 the plaint was prepared on the 26 March 2008. A date he most certainly had no practicing certificate.

III: Findings

14. The plaintiff's advocate Moerwa Omwoyo filed his pleadings on 27 March 2008. He held no practicing certificate when he did this.

15. The advocate is not honest. His attempt to mislead this court that he had a practicing certificate is unfortunate.

16. The pleading and the whole suit stands struck out. The application is refused and dismissed with costs to the respondent for this application and the main suit.

DATED THIS 30TH DAY OF JULY 2008 AT NAIROBI

M.A. ANG'AWA

JUDGE

M. Omwoyo instructed by M. Omwyoyo & Co. Advocates for the plaintiff - present

M. Waiganjo of M. Waiganjo & Co. Advocates for the defendant/respondent – present